

### FILED

MAY 27 2014

### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

(1) SONYA D. LANGE,	)
(1) BOINTH B. EMNOE,	il au no To To
Plaintiff,	) CASE NO. 14-CV-268-JED-TW
vs.	(Case No. CJ-2014-357, In the District Court of Tulsa County, State of Oklahoma Judge Cantrell)
(2) JOHN ZINK CO., LLC,	Judge Cantrell)
Defendant.	, )

### **NOTICE OF REMOVAL**

Defendant John Zink Co., LLC, ("John Zink"), pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby removes this action from the District Court of Tulsa County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma. As grounds for removal, John Zink states as follows:

- 1. On November 15, 2011, Plaintiff filed a Petition in the District Court of Tulsa County, State of Oklahoma, against John Zink. The case was assigned Case No. CJ-2014-357.
- 2. The civil summons and the Petition (the "State Court Action") were served on Defendant on or about January 30, 2014, via certified mail. A true and correct copy of the Petition and summons as received are attached hereto as Exhibits 1 and 2, respectively.
- 3. All papers served on Defendant in the State Court Action at the time of this removal are attached hereto pursuant to 28 U.S.C. § 1446(a) and LCvR 81.2. They include:

Ex. No.	Date	Description
1	01-28-2014	Petition
2	01-28-2014	Summons, Served 01-30-2014 by Certified Mail
3	02-14-2014	Entry of Appearance for Brightmire and Salton
4	02-19-2014	Answer and Affirmative Defenses
5	02-19-2014	Motion to Dismiss and Brief in Support
6	03-06-2014	Plaintiffs Response in Opposition to Motion for Partial
		Dismissal
7	03-24-2014	Defendant's Motion for Leave to File Reply Brief

Fees Pd.

Ex. No.	Date	Description	
8	03-25-2014	Plaintiff's Response in Opposition to Defendant's Motion to	
		File Reply Brief	
9	03-26-2014	Order Granting Defendant's Leave to File Reply Brief	
10	03-31-2014	Defendant's Reply to Plaintiff's Response to Defendant's	
		Motion for Partial Dismissal	
11	04-23-2014	Plaintiff's Motion to Compel Discovery and Supporting Brief	
12	04-28-2014	Defendant's Motion to Quash Subpoena Served Upon Metlife	
		and Brief in Support	
13	04-28-14	Defendant's Motion to Quash Subpoena Served Upon	
		Broadspire Management Services and Brief in Support	
14	04-28-2014	Defendant's Motion to Quash Subpoena Served Upon	
		Crawford and Company and Brief in Support	
15	04-28-2014	Defendant's Motion to Quash Subpoena Served Upon Old	
		Republic Insurance Company and Brief in Support	
16	05-01-2014	Plaintiff's Supplement to Motion to Compel Discovery	
17	05-02-2014	Agreed Mutual Protective Order	
18	05-05-2014	Defendant's Motion to Withdraw Defendants Motion to Quash	
		Subpoena Duces Tecum Served Upon Broadspire Management	
		Services Inc	
19	05-05-2014	Defendant's Motion to Withdraw Defendant's Motion to	
		Quash Subpoena Duces Tecum Served Upon Metlife	
20	05-06-2014	Notice of Hearing, Affidavit of Mailing	
21	05-08-2014	Defendant's Amended Motion to Quash Subpoena Duces	
		Tecum Served Upon Crawford & Company and Brief in	
		Support	
22	05-08-2014	Defendant's Amended Motion to Quash Subpoena Duces	
		Tecum Served Upon Old Republic Insurance Company and	
		Brief in Support	
23	05-09-2014	Defendant's Response to Plaintiff's Motion to Compel and	
		Combined Defendant's Motion for Protective Order	
24	05-09-2014	Order Granting Defendant's Motion to Withdraw Its Motion to	
		Quash Subpoena Duces Tecum Served Upon Metlife	
25	05-09-2014	Order Granting Defendant's Motion to Withdraw its Motion its	
		Motion to Quash Subpoena Duces Tecum Served Upon	
		Broadspire Management Services Inc	
26	05-13-2014	Plaintiff's Response in Opposition to Amended Motion to	
		Quash Subpoena Duces Tecum on Old Republic Insurance	
		Company	
27	05-03-2014	Plaintiffs Response in Opposition to Amended Motion to	
	05.14.501	Quash Subpoena Duces Tecum on Crawford & Company	
28	05-14-2014	Plaintiffs Response in Opposition to Zink's Motion for	
20	05 16 501 :	Protective Order	
29	05-16-2014	Amended Petition	
30	05-20-2014	Order Denying Defendant's Motion to Dismiss	
31	05-21-2014	Defendant's Motion for Leave to File Reply to Plaintiff's	

Ex. No.	Date	Description
		Response in Opposition to Zink's Motion for Protective Order
32	05-21-2014	Defendant's Motion for Leave to File Reply to Plaintiff's
		Response in Opposition to Amended Motion to Quash
		Subpoena Duces Tecum on Crawford & Company
33	05-21-2014	Defendant's Motion for Leave to File Reply to Plaintiff's
		Response in Opposition to Amended Motion to Quash
		Subpoena Duces Tecum on Old Republic Insurance Company
34	05-22-2014	Defendant's Motion for Partial Summary Judgment and Brief
		in Support
35	05-27-2014	OSCN Docket Sheet for CJ-2014-357 (Tulsa County)

- 4. In filing this Notice of Removal, John Zink does not waive any defense or counterclaim that may be available to the Defendant.
- 5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, and the action maybe removed to this Court by Defendant pursuant to 28 U.S.C. § 1441. The Amended Petition, *filed May 19, 2014*, alleges civil actions arising under the Constitution, laws, or treaties of the United States as follows: The Amended Petition alleges violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and seeks damages thereunder. *See* Ex. 29.
- 6. Removal of this action from the District Court of Tulsa County, State of Oklahoma, to this Court is, therefore, proper under 28 U.S.C. § 1441, because this Court would have had original jurisdiction of the action under 28 U.S.C. § 1331 had the action been initially filed in this Court.
- 7. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days of Defendant's receipt of the Amended Petition on or about May 20, 2014, and within one (l) year of the commencement of the action.
- 8. Written notice of filing of this Notice of Removal will be given to Plaintiff, by and through her counsel of record in the State Court Action. Also, as required by 28 U.S.C.

§ 1446(d), a copy of this Notice will be filed with the Clerk of the District Court of Tulsa County, State of Oklahoma, the court in which the State Court Action was filed.

- 9. Pursuant to LCvR 81.2, a true and correct copy of the docket sheet in the State Court Action, current through the date of this filing, is attached hereto as Ex. 35.
- 10. The following motions are currently pending and, per LCvR 81.2, Defendant is providing to the Court an extra copy of these motions:

Plaintiff's Motion to Compel Discovery and Supporting Brief, filed April 23, 2014.

Defendant's Amended Motion to Quash Subpoena Duces Tecum served upon Crawford & Company and Brief in Support, filed May 8, 2014

Defendant's Amended Motion to Quash Subpoena Duces Tecum served upon Old Republic Insurance Company and Brief in Support, filed May 8, 2014

Defendant's Motion for Leave to file Reply to Plaintiff's Response in Opposition to Amended Motion to Quash Subpoena Duces Tecum on Crawford & Company, filed May 21, 2014

Defendant's Motion for Leave to file Reply to Plaintiff's Response in Opposition to Amended Motion to Quash Subpoena Duces Tecum on Old Republic Insurance Company, filed May 21, 2014

Defendant's Motion for Leave to file Reply to Plaintiff's Response in Opposition to Zink's Motion for Protective Order, filed May 21, 2014

Defendant's Motion for Partial Summary Judgment and Brief in Support, filed May 22, 2014

11. Defendant will file a Status Report on the Removed Action in accordance with LCvR 81.2

WHEREFORE Defendant John Zink respectfully requests that the above referenced action now pending in the District Court of Tulsa County, State of Oklahoma, be removed therefrom and proceed in this Court as an action duly removed from this day forward.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Bv:

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212 DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P. Two West Second Street, Suite 700 Tulsa, Oklahoma 74103-3117 Telephone (918) 591-5204 Facsimile (918) 925-5204

kbrightmire@dsda.com

### **CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 27<sup>th</sup> day of May 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

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DISTRICT COURT

JAN 28 2014 IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SALLY HOWE SMITH, COURT CLERK STATE OF GIVEN THE SECONDLY

SONYA D. LANGE, Plaintiff, CJ-2014-00357 VS. JOHN ZINK CO., LLC., DAMAN CANTRELL a Foreign Limited Liability Company, ATTORNEY LIEN CLAIMED JURY TRIAL DEMANDED Defendant.

### **Petition**

COMES NOW the Plaintiff, Sonya D. Lange ("Lange"), and herein alleges and states the following against the Defendant, John Zink Co., LLC ("Zink"), in her Petition as follows:

### Parties, Jurisdiction and Venue

- 1. That Plaintiff is a resident of Tulsa County, State of Oklahoma;
- 2. That Defendant is a foreign limited liability company, conducting business in Tulsa County, Oklahoma;
- 3. That the incidents complained of herein occurred in Tulsa County, State of Oklahoma;
  - 4. This Court possesses jurisdiction over this action and parties;

### Count I: WRONGFUL DISCHARGE - 85 O.S. § 341

5. That Lange was employed by ZINK as for approximately four (4) years when terminated;

- 6. That during the course of Lange's employment with ZINK she suffered work related injuries, was rendered Temporarily Totally Disabled pursuant to "Work Restrictions" and/or Work Release(s), that took her off work entirely, due to the work injuries in order to recuperate and that ZINK could not or would not accommodate the Work Restrictions or Work Releases. Lange reported awareness of this work injury as occurring on or about September 1, 2010, and filed a claim in Workers' Compensation Court. (Forms 3, Exhibit "A"). ZINK admitted work injuries to parts of Lange's body and was aware that Lange required short-term disability and claimed to be Temporarily Totally Disabled. (see Form 9s and Form10s, Exhibit "B");
- 7. That while under related physician's work restrictions, light duty restrictions, ZINK terminated Lange effective October 9, 2012, or soon before. (ZINK email by P. Smith, Human Resources Leader, Exhibit "C"). At the time of Lange's employment termination, ZINK was aware that Lange alleged to be or was Temporarily Totally Disabled, as determined by The Workers' Compensation Court for the State of Oklahoma. (See Order and Appeal Order, Exhibit "D"). During this same course of events, ZINK terminated Lange's Group Health Insurance;
- 8. That ZINK terminated the employment of Lange because, in good faith, she pursued her legal rights under Oklahoma's Workers' Compensation laws, made a claim, sought legal advise, retained an attorney and/or because he was absent from work during a period of Temporary Total Disability (light duty unavailable or off work entirely);
- 9. That Lange was wrongfully discharged by ZINK under 85 O.S. §341(A)(1)(2) and/or (3) for pursuing and filing a good faith claim under Oklahoma's Workers' Compensation laws. In addition, and alternatively, Lange was wrongfully discharged

under 85 O.S. §341(B) for being absent from work while Temporarily Totally Disabled under Oklahoma's Workers' Compensation laws. Further, in this same course of events, ZINK terminated Lange's Group Health Insurance in violation of 85 O.S. §341(A);

10. The conduct of ZINK, through its supervisors and managers, towards Lange was extreme and outrageous in its character. ZINK was on notice and aware of Lange's allegation of on-the-job injuries, Workers' Compensation claim and Temporary Total Disability status prior to the termination. In addition, ZINK was on notice and aware of Lange's "Work Restrictions" and/or Work Release(s) either directly or through its legal counsel and/or representative(s) alleging an on-the-job injury, prior to the termination;

11. That Lange has suffered and continues to suffer from pecuniary loss, gross humiliation, embarrassment, ridicule, shame, fright, emotional distress, injury to her reputation, etc., as a result of the actions and inactions of ZINK complained of above. Particularly, Lange has suffered loss of past and prospective earnings, vacation pay, sick pay, group health insurance and a host of other benefits and privileges, in addition to lost wages;

WHEREFORE, the Plaintiff, Sonya D. Lange, prays that she recover from the Defendant, John Zink Co., LLC, on Count I, in a sum in excess of \$75,000.00 in actual damages plus punitive damages, all costs of this action, a reasonable attorney's fee, granted reinstatement by the Court and any further relief which the Court deems to be appropriate. Lange reserves the right to amend this cause upon completion of discovery in this action.

### Count II. Negligent Hiring, Supervision & Retention

Lange hereby incorporates herein all prior allegations of this Petition, and further alleges as follows:

- 12. The conduct of ZINK, through its supervisors and managers, towards Lange was extreme and outrageous in its character. ZINK was on notice and aware of Lange's on-the-job injuries and Workers' Compensation claim prior to the termination. In addition, ZINK was on notice and aware of Lange's "Work Restrictions" and/or Work Release(s) either directly or through its legal counsel and/or Workers' Compensation representative(s) prior to the termination;
- 13. That ZINK was aware of, or certainly should have been aware of, the offensive actions and inactions of its supervisors and managers towards Lange. As Lange's employer, with authority over Lange, her supervisors and managers, ZINK had the authority and duty to hire competent supervisors and managers properly trained and supervised in state Workers' Compensation laws, rights and responsibilities and to supervise its supervisors and managers; further, to terminate its supervisors and managers that violated the terms and provisions of the law applicable to the allegations contained in this Petition. ZINK violated its duty in this regard to Lange and she was directly damaged as a result.
- 14. Lange has suffered and continues to suffer from pecuniary loss, gross humiliation, embarrassment, ridicule, shame, fright, emotional distress, injury to her reputation, etc., as a result of the actions and inactions of the ZINK complained of above. Particularly, Lange has suffered loss of past and prospective earnings, vacation pay, sick pay, and a host of other benefits and privileges, in addition to lost wages.

WHEREFORE, the Plaintiff, Sonya D. Lange, prays for judgment against Defendant, John Zink Co., LLC, on Count II, in a sum in excess of \$75,000.00 representing her actual damages, punitive damages, plus attorney's fees, costs and such additional relief as the Court deems proper. Lange reserves the right to amend this cause upon completion of discovery in this action.

### Count III: INTENTIONAL INFLICTION of EMOTIONAL DISTRESS

Lange hereby incorporates herein all prior allegations in this Petition and further alleges as follows:

- 15. The conduct of ZINK, through its supervisors and managers, towards Lange was extreme and outrageous in its character. ZINK was on notice and aware of Lange's on-the-job injuries and Workers' Compensation claim prior to the termination. In addition, ZINK was on notice and aware of Lange' "Work Restrictions" and/or Work Release(s) either directly or through its legal counsel and/or Workers' Compensation representative(s) prior to the termination;
- 16. The conduct of ZINK's supervisors and employee/representatives towards Lange was extreme and outrageous in its character. The conduct was done recklessly and intentionally while ZINK and its supervisors and employee/representatives were in a position of power and authority over Lange. Such conduct has caused Lange severe emotional distress and required attention and treatment. Lange has suffered and continues to suffer pecuniary loss, gross humiliation, embarrassment, ridicule, shame, fright, and injury to her reputation and occupation as a result of ZINK and its supervisors and employee/representatives' actions. ZINK is responsible for the conduct of its supervisors and employee/representatives under the doctrine of respondeat superior

and under agency principles. ZINK is also independently liable since it failed to take reasonable steps to protect Lange from the acts complained of herein;

WHEREFORE, the Plaintiff, Sony D. Lange, prays for judgment against Defendant, John Zink Co., LLC, on Count III, in a sum in excess of \$75,000.00 representing her actual damages, punitive damages, plus attorney's fees, costs and such additional relief as the Court deems proper. Lange reserves the right to amend this cause upon completion of discovery in this action.

> ATTORNEY LIEN CLAIMED **JURY TRIAL DEMANDED**

Respectfully Submitted,

Tim Gilpin, OBA #11844 **GILPIN LAW OFFICE** 1874 South Boulder **TULSA, OK 74119** (918) 583-8900 telephone (918) 796-5724 fax timgilpin@gilpinlaw.net Attorney for Sonya D. Lange

### **VERIFICATION**

STATE OF OKLAHOMA

COUNTY OF TULSA	3		
I, Sonya D. Langand states that she is understands the content same after true and corrected	the Plaintiff in the sontained in the for	above Petition, tha regoing Petition and	
Sonya D. Lange	je		4
SUBSCRIBED AND SV	VORN to before me	this <u>27</u> day o	f

My Commission Expires:

VICTORIA L WOOD
Notary Public
State of Oklahoma
Commission # 10010188
My Commission # 2014

EXHIBIT "A"

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Employer: JOHN LINK L		Kocy INDUST.	Employer's FE	l # (Federal ID Nu		none: 2 34 - 1800
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EXHIBIT "B"

### FORM 9

In re claim of:

**WORKERS' COMPENSATION COURT** Send original to Workers' Compensation Court and 1 copy to Each Opposing Party/Counsel

1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS SPACE FOR COURT USE ONLY MURKELOLU

Full Name of Claimant (Injured Employee) Sonya Lange

Claimant's Social Security Number (LAST 4 DIGITS ONLY)

Name of Employer (Respondent)

John Zink, LLC. Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or

MOTION TO SET FOR TRIAL

**WCC File Number** 2012-07091A

Broadspire Association	9/1/10	
NOTE: Mediation is available to address certain workers' co (800) 522-8210.	compensation disputes. For Information, call (405) 522-8760 or In-St	ate Toll Fre
(Please Type or Print)		
1. Issues to be tried: (Circle all applicable issues below.)	to .	
Temporary Total Disability from  b Medical Treatment from	10	
	a mpamen.	
<ul> <li>d. Permanent Total Disability.</li> <li>e. Motion to Reopen on Change of Condition. He</li> </ul>	Has the Reopen Fee been paid? TYES T NO	
	a Certified Workplace Medical Plan (CWMP). (Note: File a Form A to	set a
g. Change of Case Manager for a worker not cov  Rate: TTDPPD/PP	overed by Certified Workplace Medical Plan (CWMP).  PI  AWW	
i. Death Benefits.		
j. Appeal from Form 18 Order.		
k. Form 19 (Request For Payment of Health or R Other (SPECIFY) Treatment; Rate; Con	Rehabilitation Services). Was the Form 19 filed previously?  YES mpensability; TTD (if no light duty)	 NO
	L EXPERTS SHALL BE COMPLETED PRIOR TO TRIAL)	
<ol><li>List the names of all witnesses who may be called at tri Any and all previously endorsed; Any and</li></ol>	d all respondent witnesses	
<ol> <li>List all exhibits to be introduced at trial: Wilson (7/1 Any and all previously endorsed; Any and</li> </ol>	13/12) d all respondent exhibits	•
<ol> <li>Requestor hereby certifies that a copy of the medical remailed, together with this motion, to Opposing Party/Co copy of the medical report when filing the Form 9 with the second of the medical report when filing the Form 9 with the second of the medical report when filing the Form 9 with the second of the medical report when filing the Form 9 with the second of the second of the medical report when filing the Form 9 with the second of the medical report when filing the Form 9 with the second of the sec</li></ol>	ounsel. (Helerio Court rules regarding the exchange of exhibits.) Do r	wa: IOT attach a
I declare under penalty of perjury that I have examined this m they are true, correct and complete. Any person who commit	motion and all statements contained herein, and to the best of my knowledgits workers' compensation traud, upon conviction, shall be guilty of a felon	ge and belief, y. 012
I HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this day of 7	
Opposing Party/Counsel Broadspire	Signature of Requesting Party A claimant  resp.  med/rel	hab provider
Address (Number & Street) 1861 N. Rock Road, Suite 202	P.O. Box 35346	
City State Zip Code Witchita, KS 67206	City State Zip Cod Tulsa, OK 74153	le
	Telephone # of Requesting Party (918) 664-1113	
08/29/11	Jack G. Zurawik PLAINTIFF'S 11	588
	EXHIBIT	

	RS' COMPENSATION COU'	THIS SPACE FOR COURT USE ONLY
Send original to OKLAHOM		
Workers' Compensation Court and 1 copy to Each Opposing Party/Counsel		· · · · · · · · · · · · · · · · · · ·
In re claim of:		TO SOLD TO
Full Name of Claimant (Injured Employee)	<del></del>	
Sonya Lange	WOD, AU	
Claimant's Social Security Number II AST 4 DIGITS ONLY)	"AEAS CO	10:012
xxx-xx 6953	MOTION TO SET FOR TRIACOUP	MAP
Name of Employer (Respondent)	WCC File Number 2012-07091/	TO SOLD TON
John Zink, LLC. Employer's Insurance Camer, Permit # for Court Approved Individual Self-Ins	2012-07-0917	1 21 VIV
Broadspire Association	Date of Injury 9/1/10	
NOTE: Mediation is available to address certain workers' cos (800) 522-8210.	mpensation disputes. For information, call (405) 5	22-8760 or In-State Toll Fre
(Please Type or Print)		
1. Issues to be tried: (Circle all applicable issues below.)		
Temporary Total Disability from	to an include the second	
Medical Treatment from	<u> 10 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 </u>	
c. Permanent Partial Disability/Permanent Partial	Impairment.	
d. Permanent Total Disability.		
e. Motion to Reopen on Change of Condition. Has	and a sign of his big the control of the first and a sign of the control of the c	
f. Change of Physician for a worker covered by a request for Change of Physician when there is a	Certified Workplace Medical Plan (CWMP). (Note: no CWMP.)	File a Form A to set a
	red by Certified Workplace Medical Plan (CWMP).	
h. Rate: TTD PPD/PPI		<u>.</u>
i. Death Benefits.		tana ay
j. Appeal from Form 18 Order		
Danie Danie Ardickan C	habilitation Services). Was the Form 19 filed previ	ously? TYES NO
	urgery; TTD; Rate; Defer to Spine Spe	
그 그는 그의 가는 그는 그는 것이 되는 그를 가장 하는 그렇게 되고 있다고 사랑하는 생각이 되었다면 되었다. 그	EXPERTS SHALL BE COMPLETED PRIOR TO T	RIAL.)
<ol><li>List the names of all witnesses who may be called at tria Any and all previously endorsed; Any and</li></ol>	all respondent witnesses	
MRI (v2)- FA	MG (8/15/11): Wilson (7/13/12): Nebero	iall (5//31/12-6/14/12)
Any and all previously endorsed; Any and	all respondent exhibits	<u>,, (,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,</u>
	The street of th	no above
<ol> <li>Requestor hereby certifies that a copy of the medical rep malled, together with this motion, to Opposing Party/Cou copy of the medical report when filing the Form 9 with the</li> </ol>	insel. (Refer to Court rules regarding the exchange	dated as above war of exhibits.) Do <u>NOT</u> attach a
I declare under penalty of perjury that I have exemined this mo		net of my knowledge and holle
I deciare under penalty of perjury that I have examined this mo they are true, correct and complete. Any person who commis	workers' compensation fraud, upon conviction, shall	be guilty of a felony.
HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this 10 day of August	2012
Opposing Party/Counsel	Signature of Requesting Party Claimant   re	sp. med/rehab provider
Jennifer Sloan		
Address (Number & Street)	Address (Nyfriber & Street) P.O. Box 65346	
P.O. Box 1710  City State Zip Code	City State	Zip Code
City State Zip Code Tulsa, OK 74101	Tulsa, OK 74153	
	Telephone # of Requesting Party	
	(918) 664-1113	
08/29/11	Print or type name of Attorney	OBA# 11588

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

Send original to

Norkers' Compensation Court a Claimant or the Claimant's Atto	and 1 copy to mey of Record		
n re claim of:			
Full Name of Injured Employe SONYA D. LANGE	e (Claimant)		
Claimant's Social Security No	umber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OF	FERED BY RESPONDENT
XXX-XX- 6953		WCC FILE NO. 2012-07091A	
Name of Employer (Respond JOHN ZINK COMPANY, LLC	ent)	Date of Injury 69/01/2010	
Employer's insurance Carrier, Pen Own Risk Group, Uninsured OL	nit # for Court Approved Individual Self-Insured or D REPUBLIC INSURANCE		
NOTH: Mediation is available 522-8210.	to address certain workers compensation di	sputes. For information, call (405) 522–8760 o	r In-State Toll Pree (800)
YES NO	(Please type or Print)		
X	1. Was claimant at the time of the alleg	ed injury, an employee of the above named respor	ndent?
X	2. Was claimant covered by the Worke	rs' Compensation Act?	
X	<ol> <li>Did claimant sustain an accidental in employment?</li> </ol>	jury or suffer an occupational disease arising out o	f and in the course of the
<u> </u>	4. Has claimant filed a Form 3 within th	e statutory period of time?	
X	5. Did respondent, at the time of the all the carrier named in the caption about	eged Injury, have an own-risk permit or a compens ve?	ation insurance policy with
X	6. Did claimant timely notify respondent		
X	<ol><li>Has claimant been provided medical</li></ol>	treatment?	
X	· · · · · · · · · · · · · · · · · · ·	nt of temporary total disability payments to claiman	
	Temporary total disability has been problem total of weeks	aid to claimant from 7/10/11 to _8/22 to _8/22	//11 for a
<u> </u>	Has respondent selected a treating p     The treating physician isDr. Watts	hysician?	ealing physician).
(ALL	DEPOSITIONS OF MEDICAL EXPERT	S SHALL BE COMPLETED PRIOR TO TRIAL	
X	10. Is rate an Issue? Claimant's comper	sation rate: TTD _594.41 PPD_323.00	)
State all affirmative defens shoulder claimant is received.	es: Reserve the right to add additional defens ving short-term disability of \$491/wk, beginnin	es upon completion of discovery; deny right elbow g date approx 8-1-12.8 continuing; pre-existing cor	shoulder, neck and left
the contract of the contract o	•	All Claimant's witnesses; All previously endorsed v	
Karen Miller, Paula Huddle	ston: Lisa Mautino; Dr. Kathleen Sisler; Dr. C	halkin :	
<ol><li>List all exhibits to be introd</li></ol>	uced at trial: All Claimant's exhibits; All previo	usly endorsed exhibits; Medical records of Or. Ala	n Martin; wage statement;
Dr. Watts 8/19/11, 8/22/11 12/6/12; Dr. Rim Tabbaa 5	<u>9/21/11 10/19/11 4/4/12 4/25/12; Or Pettin</u> /26/11, 1/5/12, 6/5/12, 4/5/13;	gell 8/15/11; Dr. Gillock 10/4/12, 5/1/13; Dr. Chalk	in 2/27/13: Dr Sisler
Respondent hereby certifies     was mailed, together with	es that a copy of the medical report written by a copy of this motion to Opposing party/Couns	<u>Dr</u> and datedsel.	
		TITNESSES, EXHIBITS AND MEDICAL EVID	ENCE)
declare under penalty of per orrect and complete. Any pe	iury that I have examined all statements co erson who commits workers' compensation	ntained herein, and to the best of my knowledg n fraud, upon copyrction, shall be guilty of a fel	e and belief, they are true, ony.
HEREBY CERTIFY THAT	A COPY HAS BEEN SENT TO:	Signed this day of June	, _2013
Opposing Party Jack G. Zurawik		Signature of Filling Party	
Address (Number & Street) P.O. Box 35346		Address (Number & Street) P. D. Box 1710	
	tate Zip Code 0K 74153-0346	City State Tulsa OK	Zip Code 74101-1710
nah 1580-79		Telephone # of Filing Party (918) 382-1400	
/11		Print or type name of Attorney	OBA#

MAY. 6.2013 3:43PM

### SUPPLEMENTAL FORM 10

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

Send original to
Workers' Compensation Court and 1 copy to
Claimant or the Claimant's Attorney of Record

R COURT USE ONLY

NO: 1279

٩ŀ	SWER AND PRETRIAL STIPULATION OFFERED BY RESPONDE	٧
	WCC FILE NO.	
	2012-07091A	
	Date of Injury	
1	09/01/2010	

NOTE: Mediation is available to address certain workers' compensation disputes. For information, call (405) 522-8760 or In-State Toll Free (800) 522-8210.

522-8	3210.						•	•
	YES	NO	(Ple	ease type or Print)				•
	_X		1.	Was claimant at the time of the alle	ged injury, an employee of the	above named res	pondent?	
	<u> </u>		. 2.	Was claimant covered by the Worke	ers' Compensation Act?			
	X		. 3.	Did claimant sustain an accidental in employment? deny right elbow/sh	njury or suffer an occupational oulder, neck, left shoulder/arm	disease arising or Inand and fingers	ut of and in the course of the	÷
	X		. 4.	Has claimant filed a Form 3 within the	ne statutory period of time?			
	<u>x</u> .		. 5.	Did respondent, at the time of the ai	leged injury, have an own-risk ; ve?	permit or a compe	ensation insurance policy wit	th,
	_X		6.	Did claimant timely notify responder	it of the Injury?			
	_X		. <b>7.</b>	Has claimant been provided medica	I treatment?			
	_X		. 8.	Has respondent commenced payme	nt of temporary total disability	payments to clain	nant?	
				Temporary total disability has been total of week	oald to claimant from 7/10/11 s in the total sum of \$	to _8	N/22/11 for a	٠,
	_X		9,	Has respondent selected a freating The treating physician is	<u> </u>	(name	of treating physician)	
	L	(AL	L DEPU	SITIONS OF MEDICAL EXPERT	S SHALL BE COMPLETEL	PRIOR TO TR	IAL)	
		X	10.	Is rate an issue? Claimant's compe	nsation rate: TTD _594.41	PPD_323	3.00	
11. S	tate all affirm	ative defen	ses: Res	erve the right to add additional defen	ses upon completion of discovi	ery: deny right alb	owishoulder neck left	
.5 C	shoulder/am/ ontinuing; pre	hand and fi existing co	ngers on Indition;	both hands; claimant is receiving sh wage statement	ort-term disability of \$491 week	c beginning date	of approximately A-1-12 thru	<b>—</b>
12. L	ist the name	of all witnes	sses who	may be called by respondent at trial:	All Claimant's witnesses; All p	reviously endorse	ed witnesses: Dr. Garrett Wa	alls:
ĸ	ann Miller, P	aula Huddi	esion; Li	sa Mautino; Dr. Kathleen Sister, Dr. C	thelkin			
13. Li	ist all exhibits	to be intro	duced at	trial- All Claimant's exhibits: All previ	ously endorsed exhibits: Medic	al records of Dr	Alan Martin: wage statemen	t
				1,10/19/11, 4/4/12, 4/25/12; Dr. Pattir	-		• •	
14. R W	espondent heras malled, to	ereby certifi gether with	es that a a copy o	copy of the medical report written by fithis motion to Opposing party/Coun	Dr. Gillock sel.	and dated .5	5/1/13	i
		(LIST O	NA SEF	PARATE SHEET, ADDITIONAL V	VITNESSES, EXHIBITS AN	D MEDICAL EV	(IDENCE)	
l decla correc	re under per t and comple	nalty of perete. Any p	fjury tha erson w	t i have examined all statements co no commits workers' compensatio	ontained herein, and to the b n fraud, upon conviction, sh	est of my knowle all be guilty of a	edge and bellef, they are tr felony,	<i>'⊎</i> ⊖,
HER	EBY CERTI	FY THAT	A COP	Y HAS BEEN SENT TO:	Signed his O	daynf/May	2013	
Opp	nsinn Party				Signature of Filing Party	XIAAA	· /	
	osing Party KG. Zurawik ress (Numbe	& Street)			Address (Number & Stree P. O. Box 1710	1)		
P.O.	Box 35346			7:- 0	City Tulsa	State OK	Zip Code 74101-1710	
City	8		State OK	Zip Gode 74153-0346	Telephone # of Filing Part (918) 382-1400		17101-1710	1
mah 1 B/11	580-79			·	Print or type name of Alto: Jennifer A. Sloan	mey	OBA# 19846	1
				*				

B	ιώ:	1	N.	N	ΑL
. 1		OR	W.	10	

# WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

n re claim of:		٦		
SONYA D. LANGE	(Claimant)			
Claimant's Social Security Num XXX-XX- 441-66-6953	ber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESP WCC FILE NO. 2012-07091A	ONDEN	
Name of Employer (Responden JOHN ZINK COMPANY, LLC	nt)	Date of Injury	-	
Employer's Insurance Carrier, Permit Own Risk Group, Uninsured OLD	# for Court Approved Individual Self-Insured o	09/01/2010		
NOTE: Mediation is available 800) 522-8210.	to address certain workers' compens	ation disputes. For information, call (405) 522-8760 or In-State Tol	l Free	
YES NO	(Please type or Print)			
X	1. Was claimant at the time of the a	lleged injury, an employee of the above named respondent?		
X	2. Was claimant covered by the Wo			
<u> </u>	Did cialmant sustain an accidenta employment?	al injury or suffer an occupational disease arising out of and in the course	of the	
X	4. Has dalmant filed a Form 3 within	the statutory period of time?		
5. Did respondent, at the time of the alleged injury, have an own-risk permit or a compensation the carrier named in the caption above?				
<b>X</b>	6. Did claimant timely notify respond	lent of the injury?		
X	-7; Has dalmant been provided med	ical trealment7		
<u> </u>		ment of temporary total disability payments to claimant?		
	Temporary total disability has bee total of we	en paid to dalmant from 7/10/11 to 8/22/11 for a leks in the total sum of \$	3 .	
X(ALL D	Has respondent selected a treating the treating physician is. Or, WitePOSITIONS OF MEDICAL EXPERIENT.	ng physician? atts (name of treating physician). RTS SHALL BE COMPLETED PRIOR TO TRIAL.)		
Y =	10. Is rate an Issue? Claimant's com			
. State all affirmative defenses	* * * *	enses upon completion of discovery; deny right elbow/shoulder, neck, left	·	
shoulder/arm/hand	Laborat in a solution phase from displication	of \$491/week, heginning date of approximately 6-1-12 thru continuing: pr	e nvieli	
dition; wage statement	samant is receiving silon-jeun insaniny	or 2431. week Techning date or sharmingter to 1-15 and community by	C-CAISIO	
. List the name of all witnesses	s who may be called by respondent at to	ial: All Claimani's witnesses; All previously endorsed witnesses; Dr. Garre	H Watts	
Karen Miller, Paula Huridiestr	no: Lisa Mautino: Dr. Kathleen Sisler, Dr.	Chalkin	<u></u>	
. List all exhibits to be introduce	ed at trial: All Clalmant's exhibits: All pre	eviously endorsed exhibits; Medical records of Dr. Alan Martin; wage state	ement.	
Dr. Walts 8/19/11, 8/22/11, 9/	/21/11_10/19/11_4/4/12_4/25/12; Dr. Pe	ttingell 8/15/11; Dr. Gillock 10/4/12; Dr. Chalkin 2/27/13;		
. Respondent hereby certifies to was malled, together with a co	that a copy of the medical report written opy of this motion to Opposing party/Co	by Or Sisler and dated 12/6/12 unsel.	•	
		· · · · · · · · · · · · · · · · · · ·		

I HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:

Opposing Party Jack G. Zurawik		president und de la servició de la s La servició de la servició del servició de la servició del servició de la	
Address (Number & Stree P.O. Box 35346	)	्रा स्टब्स्ट्रिक सम्बद्धाः स्टब्स्ट्रिक <del>। स्ट</del> ि	
City Tulsa	State OK	Zip Code 74153-0346	

O. Box 35346	reet)	<u>:</u> = 0,4 <u>0</u> 4	, <b>s</b> ::	21297
ity Ulsa	State OK	Zip Code 74153-034	16	
1591 70				

Street) Zip Code 74101-1710 State OK. Telephone # of Filing Party (918) 382-1400 OBA# 19846 Print or type name of Attorney Jennifer A. Sloan

Ŀ	SUPPLEMENTAL FORM 10

### WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS	<b>SPACE</b>	FOR	COURT	USE	ONI	v

	nsation Court and Claimant's Atlorney		.S (1007) 10		·
In re claim of:			1		
Full Name of In SONYA D. LAN	jured Employee (C IGE	laimant)		· [	
Claimant's Soc	lal Security Number	er (LAST 4 DIGITS ONLY)	ANSWER AND PRETE	NAL STIPULATION OF	FERED BY RESPONDENT
XXX-XX- 441-6			WCC FILE NO.	2012-07091A	
Name of Emplo JOHN ZINK CO	oyer (Respondent) OMPANY, LLC		Date of Injury	09/01/2010	
		or Court Approved Individual Self-Insured or EPUBLIC INSURANCE		03/01/2010	
NOTE: Mediati (800) 522-8210.	ion is available to	address certain workers' compensa	tion disputes. For informati	ion, call (405) 522-876	0 or In-State Toll Free
YES	NO (	Please type or Print)			
x	1	. Was claimant at the time of the all	eged Injury, an employee of the	e above named respon	dent?
X	2	. Was claimant covered by the World	kers' Compensation Act?		•
X	3	<ul> <li>Did claimant sustain an accidental employment?</li> </ul>	Injury or suffer an occupationa	al disease arising out of	and in the course of the
X	4	. Has claimant filed a Form 3 within	the statutory period of time?		
x	5	Did respondent, at the time of the time carrier named in the caption at	alleged injury, have an own-risi love?	k permit or a compensa	tion insurance policy with
X					¢ ·
X	7.	Has claimant been provided medic	al treatment?		
X		Has respondent commenced payπ	ent of temporary total disability	y payments to claimant	7
		Temporary total disability has been total of wee	paid to claimant from 7/10/11 ks in the total sum of \$	to <u>8/22/</u>	11for a
X	9.	Has respondent selected a treating The treating physician is _Dr. Wat	physician?		
	(ALL DEF	OSITIONS OF MEDICAL EXPER	TS SHALL BE COMPLETE	(name of tre D PRIOR TO TRIAL	aiing physician). )
X		). Is rate an Issue? Claimant's comp	ensation rate: TTD 594.41	PPD_323.00	,
State all affirm	•	eserve the right to add additional defe			right shoulder, neck:
	d-term disability of	\$491/week, beginning date of approxi-	malely 8-1-12 thru conflouing:	nce-evisting condition: u	vzne statement
. List the name	of all witnesses w	no may be called by respondent at tria	•	_	_
Dr. Chaikin (o	y ipt)	Lisa Mautino: Dr. Kathleen Sisler		• •	•
			iously andorsed arbibites. Medi	inal secondo of Dr. Alan	
List all exhibits to be introduced at trial: All Claimant's exhibits; All previously enforced exhibits; Medical records of Dr. Alan Martin; wage statement;  Dr. Watts 8/19/11, 8/22/11, 9/21/11, 10/19/11, 4/4/12, 4/25/12; Dr. Pettingell 8/15/11; Dr. Gillock 10/4/12; Dr. Chalkin's report of February 27, 2013.					
Respondent hereby certifies that a copy of the medical report written by Dr. Sisier. and dated 12/5/12 was mailed, together with a copy of this motion to Opposing party/Counsel.					
mes meneo, it		PARATE SHEET, ADDITIONAL \		O MEDICAL EVADE	NCE
eclare under pe		at I have examined all statements of who commits workers' compensation	<del></del>		
		Who commits workers' compensation PY HAS BEEN SENT TO:		day of March	ay. 2013
	1 1121 700	FI HAS BEEN SENT TU:	Signed this Signature of Filing Party	XIM	
Opposing Party Jack G. Zurawik	a B Shaneth		Address (Number & Stree P. O. Box 1710		
Address (Numbe P.O. Box 35346				State Zi	p Code 74104 1710
City Tulsa	State OK	Zip Code 74153-0346	Telephone # of Filing Part	OK by	74101-1710
1580-79 1			(918) 382-1400		OBA#
•	•	•	Print or type name of Atto Jennifer A. Sloan		19846

FORM 10

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

Send original to OKLAHOMA CITY, OKL Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record	AHOMA 73105-4918
In re claim of:	
Full Name of Injured Employee (Claimant) .SONYA D. LANGE	
Claimant's Social Security Number (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT
XXX-XX-6953	WCC FILE NO. 2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury 09/01/2010
Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	
NOTH: Mediation is available to address certain workers' compensation of 522-8210.	disputes. For information, call (405) 522-8760 or In-State Toll Free (800)
YES NO (Please type or Print)	
X1. Was claimant at the time of the alle	eged injury, an employee of the above named respondent?
X 2. Was claimant covered by the Work	ers' Compensation Act?
X Did claimant sustain an accidental i employment?	injury or suffer an occupational disease arising out of and in the course of the
4. Has claimant filed a Form 3 within t	
X 5 Did respondent, at the time of the a the camer named in the caption ab	illeged injury, have an own-risk permit or a compensation insurance policy with ove?
4. Bid claimant timely notify responde	
X	al treatment?
8. Has respondent commenced payment	ent of temporary total disability payments to claimant?
Temporary total disability has been total of week	paid to claimant from 7/10/11 to 8/22/11 for a ts in the total sum of \$
Y 9. Has respondent selected a treating The treating physician is Dr. Watt	is (name of treating physician).
(ALL DEPOSITIONS OF MEDICAL EXPER	TS SHALL BE COMPLETED PRIOR TO TRIAL.)
X10. Is rate an issue? Claimant's compe	
<ol> <li>State all affirmative defenses: Reserve the right to add additional defendational is</li> </ol>	ises upon completion of discovery; deny right elbow, right shoulder, nack;
receiving short-term disability of \$491/week, beginning date of approxim	nately 8-1-12 thru continuing; pre-existing condition; wage statement
2. List the name of all witnesses who may be called by respondent at trial	All Claimant's witnesses; All previously endorsed witnesses; Dr. Garrett Watts;
Karen Miller, Paula Huddleston; Usa Mautino; Dr. Kathleen Sister	
<ol> <li>List all exhibits to be introduced at trial: All Claimant's exhibits; All pravious Or. Watts 8/19/11, 8/22/11, 9/21/11, 10/19/11, 4/4/12, 4/25/12; Dr. Pettil</li> </ol>	iously endorsed exhibits: Medical records of Dr. Alan Martin; wage statement;
<ol> <li>Respondent hereby certifies that a copy of the medical report written by was malled, together with a copy of this motion to Opposing party/Cptir</li> </ol>	
	VITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
	ontained herein, and to the best of my knowledge and belief, they are true, on fraud, upon conviction, shall be guilty of a felony.
HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this AU day of January 2013 Signature of Filing Party
Opposing Party Jack G-Zurawik	James Soar
Address (Number & Street) P.O. Box 35346	Address (Number & Street) A ANALYS A NORTH
	5 2 2 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5

Telephone # of Filing Party (918) 382-1400

Print or type name of Attorney Jennifer A. Sloan

OBA# 19846

mah 1580-79 8/11

	SUPPLEMENTAL
FORM 10	FORM 10

## WORKERS' COMPENSATION COURT 1915 NORTH STILES

Send criginal to  OKLAHOMA CTTY, OKL  Workers' Compensation Court and 1 copy to  Claimant or the Claimant's Attorney of Record	AHOMA /3105-4918
In re claim of:	
Full Name of Injured Employee (Claimant) SONYA D, LANGE	
Claimant's Social Security Number (LAST 4 DIGITS ONLY) XXX-XX-6953	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT WCC FILE NO. 2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury 09/01/2010
Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	USIO 1720 TO
NOTE: Mediation is available to address certain workers' compensation d 522-8210.	lisputes. Par information, call (405) 522–8760 or In-State Toll Free (800)
YES NO (Please type or Print)	
X 1. Was claiment at the time of the aller	ged injury, an employee of the above named respondent?
X 2 Was claimant covered by the Works	
X 3. Did claimant sustain an accidental in employment?	njury or suffer an occupational disease arising out of and in the course of the
4. Has claimant filed a Form 3 within the	ne statutory period of time?
X 5. Did respondent, at the time of the all the carrier named in the caption abo	leged Injury, have an own-risk permit or a compensation insurance policy with ve?
X 6. Did claimant timely notify responder	it of the injury?
X7. Has claimant been provided medica	treatment?
X 8. Has respondent commenced payme	ent of temporary total disability payments to claimant?
Temporary total disability has been total of week	paid to claimant from 7/10/11 to 8/22/11 for a s in the total sum of \$
9. Has respondent selected a treating The treating physician is Dr. Watte (ALL DEPOSITIONS OF MEDICAL EXPERT	physician? (name of treating physician). S SHALL BE COMPLETED PRIOR TO TRIAL.)
X10. Is rate an Issue? Claimant's compe	nsation rate: TTD _594.41 PPD_323.00
State all effirmative defenses: Reserve the right to add additional defen-	ses upon completion of discovery; rieny right elbow, right shoulder, nack;
claimant is receiving short-term disability of \$491/week, beginning date of approxim	•
2. List the name of all witnesses who may be called by respondent at trial:	All Claimant's witnesses: All previously endorsed witnesses; Dr. Garrett Watts;
Karan Miller: Paula Huddleston; Lisa Mautino; Dr. Kathlean Sisler	
<ol> <li>List all exhibits to be introduced at trial. All Claimant's exhibits: All pravio</li> </ol>	ously endorsed exhibits: Medical records of Dr. Alan Martin; wage statement;
Or Walts 8/19/11, 8/22/11, 9/21/11,10/19/11, 4/4/12, 4/25/12; Or Pettio	
<ol> <li>Respondent hereby certifies that a copy of the medical report written by was malled, together with a copy of this motion to Opposing party/Coun.</li> </ol>	
	VITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
dèclare under penalty of perjury that I have examined all'statements co prrect and complete. Any person who commits workers' compensation	ontained herein, and to the best of my knowledge and belief, they are true, in fraud, upon conviction, shall be guilty of a felony?
HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this day of January 2013
Opposing Party  Jack G. Zurawik	Signature of Filing Party  Signature of Filing Party  Addings (Number & Street) (1997-14-14-14-14-14-14-14-14-14-14-14-14-14-
Address (Number & Street) P.O. Box 35346	P. O/Box 1718
City State Zip Code	City State Zip Code Tulsa OK 74101-1710
Tulsa OK 74153-0346 ah 1580-79	Telephone # of Filing Party (918) 382-1400
11	Print or type name of Attorney OBA#

### SUPPLEMENTAL FORM 10

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

Send origizal to Workers' Compensati Claimant or the Claim	on Court and 1 ant's Attorney c	OKLAHOMA CITY, OKLA copy to of Record	HOMA 73105-4918	
In re claim of:				
Full Name of Injured SONYA D. LANGE	Employee (Cla	simant)	•	
Claimant's Social S	ecurity Number	(LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL	STIPULATION OFFERED BY RESPONDENT
XXX-XX- 441-66-69	53	(2.6. 72.6.10.612.)	WCC FILE NO.	D12-07091A
Name of Employer JOHN ZINK COMP.			Date of Injury	9/01/2010
		r Court Approved Individual Self-Insured or PUBLIC INSURANCE	L	
NOTE: Mediation is (800) 522-8210.	s available to a	address certain workers' compensatio	n disputes. For information,	call (405) 522-8760 or In-State Toll Free
YES	NO (F	Please type or Print)		•
· · ·X ·		Was claimant at the time of the allege	ed injury, an employee of the ab	ove named respondent?
X	2.	Was claimant covered by the Worker	s' Compensation Act?	·
X`_	3.	Did claimant sustain an accidental in employment? * ADMIT RIGHT HA	ury or suffer an occupational di ND ONLY	sease arising out of and in the course of the
X	4,	Has claimant filed a Form 3 within the	statutory period of time?	
X	X Did respondent, at the time of the alleged injury, have an own-risk permit or a compensation insurance policy with the carrier named in the caption above?			
X	6.	Did dalmant timely notify respondent	of the injury?	
X	7. Has claimant been provided medical treatment?			
X	X B. Has respondent commenced payment of temporary total disability payments to claimant?			
•	Temporary total disability has been paid to claimant from 7/10/11 to 8/22/11 for a total of weeks in the total sum of \$			
X	9.	Has respondent selected a treating pi The treating physician is Dr. Watts	nyskdan?	(name-of-treating-physician).
3.5	(ALL DEP	OSITIONS OF MEDICAL EXPERTS	SHALL BE COMPLETED I	
		. Is rate an Issue? Claimant's compen		PPO_323.00
11. State all affirmative claimant is	ve defense <u>s: Re</u>	eserve the dight to add additional delens	es upon completion of discover	r deny right elbow, right shoulder, neck:
•	rm disability of	\$491/week, beginning date of approxima	tely 8-1-12 that continuing: pre-	existing condition; wage statement
List the name of a			Ali Claimant's wilnesses; Ali pre	viously endorsed witnesses; Dr. Garrett Watts:
13. List all exhibits to	be introduced a	at Irial: All Claimant's exhibits: All previou	isly endorsed exhibits: Medical	records of Dr. Alan Madin; wage statement;
Or Watis 6/19/11	8/22/11, 9/21/	11,10/19/11, 4/4/12, 4/25/12; Dr. Petting	ell 8/15/11:	
14. Respondent herel was malled, toget	by certifies that her with a copy	a copy of the medical report written by I of this motion to Opposing party/Couns	Or Gillock	and dated <u>10/4/12</u> ,
		PARATE SHEET, ADDITIONAL WI		MEDICAL EVIDENCE)
l declare under penali correct and complete	ty of perjury th . Any person t	at I have examined all statements con who commits workers' compensation	tained herein, and to the bes fraud, upon conviction, shall	t of my knowledge and belief, they are true, be gullty of a felony.
		<b>/</b>	Signed thisa	ay of October , 2012
Opposing Party Jack G. Zurawik			Signature of Filing Party	han
Address (Number & P.O. Box 35346	Street)		Address (Number & Street) P. O. Box 1710	
City Tulsa	State OK	Zlp Code 74153-0346	City Sta Tulsa	Ale Zip Code OK 74101-1710
le . 1580-79			Telephone # of Filing Party (918) 382-1400	

Print or type name of Altorney Jennifer A. Stoan

OBA# 19846

jte . 1580-79 8/11

#### SUPPLEMENTAL FORM 10

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

Send original to OKLAHOMA CITY, OKLA Workers' Compensation Court and 1 copy to	HOMA 73105-4918
Claiment or the Claimant's Attorney of Record	
In re claim of:  Full Name of Injured Employee (Claimant)	
SONYA D. LANGE	
Claimant's Social Security Number (LAST 4 DIGITS ONLY) XXX-XX-6953	WCC FILE NO.  2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury 09/01/2010
Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	
NOTE: Mediation is available to address certain workers' compensation di 522–8210.	sputes. Por information, call (405) 522–8760 or In-State Toll Free (800)
YES NO (Please type or Print)	
X1. Was claimant at the time of the allege	ed injury, an employee of the above named respondent?
X 2. Was claimant covered by the Worker	s' Compensation Act?
X 3. Did claimant sustain an accidental in employment? * ADMIT RIGHT HA	ury or suffer an occupational disease arising out of and in the course of the ND ONLY
X4. Has claimant filed a Form 3 within the	•
X 5. Did respondent, at the time of the alle the carrier named in the caption above	eged injury, have an own-risk permit or a compensation insurance policy with
X6. Did dalmant timely notify respondent	
X 7. Has claimant been provided medical	Irealment?
X	t of temporary total disability payments to claimant?
Temporary total disability has been p total of weeks	aid to claimant from 7/10/11 to 8/22/11 for a in the total sum of \$
X 9. Has respondent selected a treating p The treating physician isDr. Walts (ALL DEPOSITIONS OF MEDICAL EXPERTS	nysician? (name of treating physician). S SHALL BE COMPLETED PRIOR TO TRIAL.)
X10. Is rate an Issue? Claimant's compen	sation rate: TTD <u>594.41 PPD 323.00</u>
1. State all affirmative defenses: Reserve the right to add additional defense	es upon completion of discovery, deny right elbow, right shoulder, neck:
claimant is  receiving short-term disability of \$481 (week, beginning date of approximate).  List the name of all witnesses who may be called by respondent at trial: A  Karen Miller, Paula Huddleston; I isa Mautino.	tlely 8-1-12 thru continuing; pre-existing condition; All Claimant's witnesses; All previously endorsed witnesses; Dr. Garrett Watts;
13. List all exhibits to be introduced at trial: All Claimant's exhibits; All previous	usiy endorsed exhibits; Medical records of Dr. Alan Martin; wage statement;
Dr. Walts 8/19/11, 8/22/11, 9/21/11,10/19/11, 4/4/12, 4/25/12; Dr. Petting	ell 8/15/11:
<ol> <li>Respondent hereby certifies that a copy of the medical report written by I was malled, together with a copy of this motion to Opposing party/Couns</li> </ol>	Or Gillock and dated 10/4/12
(LIST ON A SEPARATE SHEET, ADDITIONAL W	TNESSES, EXHIBITS AND MEDICAL EVIDENCE)
declare under penalty of perjury that I have examined all statements concorrect and complete. Any person who commits workers' compensation	ntained herein, and to the best of my knowledge and belief, they are true, fraud, upon conviction, shall be guilty of a felony.
HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this - 0 / day of October 2012
Opposing Party Jack G. Zurawik	Signature of Filing Party  Address (Number & Street)
Address (Number & Street) P.O. Box 35346	P. Ø. Bøx 1710  City State Zip Code
City State Zip Code Tulsa OK 74153-0346	Tulsa OK 74101-1710  Telephone # of Filing Party
nah 1580-79 3/11	(918) 382-1400  Print or type name of Attorney OBA#
<del></del>	Inneifer A Shan

÷	SUPPLEMENTA FORM 10	T A
	FURIN IO	

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

Send original to OKLAHOMA CITY, OKI Workers' Compensation Court and 1 copy to Claimant or the Claimant's Altorney of Record	LAHOMA 73105-4918
In re claim of:	
Full Name of Injured Employee (Clalmant) SONYA D. LANGE	
Claimant's Social Security Number (LAST 4 DIGITS ONLY) 6953	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT WCC FILE NO. 2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury
Employer's Insurance Carrier, Permit#for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	09/01/2010
NOTE: Mediation is available to address certain workers' or In-State Toll Free (800) 522-8210.	compensation disputes. For information, call (405) 522-8760
YES NO (Please type or Print)	
X 1. Was claimant at the time of the all	eged injury, an employee of the above named respondent?
X 2. Was claimant covered by the World	kers' Compensation Act?
X 3. Did claimant sustain an accidental employment? * ADMIT RIGHT !	injury or suffer an occupational disease arising out of and in the course of the AND ONLY
X 4. Has claimant filed a Form 3 within	the statutory period of time?
X5. Old respondent, at the time of the the carrier named in the caption ab	alleged injury, have an own-risk permit or a compensation insurance policy with xxxx
X 6. Did claimant timely notify responde	ent of the injury?
X 7. Has claimant been provided medic	
	ent of temporary total disability payments to claimant?
Temporary total disability has been total of wee	s paid to claimant from to for a ks in the total sum of \$
9. Has respondent selected a treating The treating physician is Dr. Wat (ALL DEPOSITIONS OF MEDICAL EXPER	physician? ts (name of treating physician). TS SHALL BE COMPLETED PRIOR TO TRIAL.)
(ALL DE COMPONO OF MEDIONE EM EN	TO GUALE BE GOWELL LED FIGUR TO TRIAL.
	ensation rate: TTD PPD
<ol> <li>State all affirmative defenses: Reserve the right to and additional defer claimant is receiving short-term disability of \$491/week, beginning date</li> </ol>	nses upon completion of discovery: .deny.right elbow, right shoulder, neck: e of approximately 8-1-12 thru continuing
pre-existing condition:	
12. List the name of all witnesses who may be called by respondent at that Karen Miller; Paula Huddleston; Lisa Mautino	l: All Claimant's witnesses: All previously endorsed witnesses: Dr. Garrett Watts:
13. List all exhibits to be introduced at Irial: All Claimant's exhibits: All prev	riously endorsed exhibits:
Medical records of Dr. Alan Martin	
<ol> <li>Respondent hereby certifies that a copy of the medical report written b was mailed, together with a copy of this motion to Opposing party/Cou</li> </ol>	y Dr and dated nset.
(LIST ON A SEPARATE SHEET, ADDITIONAL)	WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
l declare under penalty of perjury that i have examined all statements correct and complete. Any person who commits workers' compensation	contained herein, and to the best of my knowledge and belief, they are true, on fraud, upon conviction, shall be guilty of a felony.
I HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this 17th day of September , 2012
Opposing Party Jack G. Zurawik	Signature of Filing Party # 3085 o
Address (Number & Street) P.O. Box 35346	Address (Number & Street) P. O. Box 1710
Cltv State Zin Code	City State Zip Code

Opposing Party Jack G. Zurawik			
Address (Number & Street) P.O. Box 35346	. :		
City Tulsa	State OK	Zip Code 74153-0346	

kip 1580-79 8/11

Signed to	his <u>17th                                    </u>	day.of Seر	ntember, _20	112
Signatu	re of Fling Parl	The same	Han	#3085
Addres P. O. I	s (Number & St Box 1710	reet)		
City Tulsa		State OK	Zlp Code 74101-	1710
Teleph (918) 3	one # of Filing P 82-1400	arty		
Print or Jennifer	type name of A	ttomey	OB/ 198	

FORM 10				ENSATION COURT	THIS SPACE FO	R COURT USE ONLY
				TH STILES		
Send original to Workers' Compen	sation Court	and 1 copy		KLAHOMA 73105-4918		
Claimant or the Cl						
In re claim of:				•		
Full Name of inju	ured Employ	ee (Clalma	nt)	· .		
SONYA D. LANG	GE				1,	
	al Security N	umber (LA	ST 4 DIGITS ONLY)	ANSWER AND PRETRIAL	STIPULATION OFFE	RED BY RESPONDENT
6953				WCC FILE NO.	012-07091A	
Name of Employ				Date of Injury		
				- 1	9/01/2010	·
Employers Insuran Own Risk Group, U	ce Camer, Per Ininsured Ol	mit#forCol _D REPUB	rd Approved Individual Self-Insured o LIC INSURANCE	77		
NOTE: Mediat or In-State To		00) 522-8	3210.	o' compensation disputes.	For information,	call (405) 522-8760
YES	NO	(Pleas	se type or Print)			•
X		1. W	as claimant at the time of the a	lleged injury, an employee of the at	ove named responder	t?
X		2. W	as claimant covered by the Wo	rkers' Compensation Act?	<b>~</b>	
X	<u></u>	3. D ei	ld claimant sustain an accidenta nployment?	al injury or suffer an occupational dis HAND ONLY	sease arising out of an	d in the course of the
X		4. H	as claimant filed a Form 3 withi	n the statutory period of time?		
X		5. D	d respondent, at the time of the e carrier named in the caption a	alleged injury, have an own-risk pe above?	rmit or a compensation	insurance policy with
X		6. D	d claimant timely notify respond	dent of the injury?	•	
X		7. H	as claimant been provided medi	ical treatment?		
X		8. H	as respondent commenced pay	ment of temporary total disability pa	yments to claim <b>an</b> t?	
		Te to	emporary total disability has been tal of we	n paid to claimant fromeks in the total sum of \$	to	for a
-		9. H	as respondent selected a treatin	g physician?		1
	(ALL	DEPOSI	ne treating physician is Dr. Wa FIONS OF MEDICAL EXPE	RTS SHALL BE COMPLETED F	(name of treation of treation (name of treation)	IO DOVSICISO).
χ.		10 Is	rate an issue? Claimant's com	pensation rate: TTD	PPD	
1 State all affirm	ative delens			enses upon completion of discovery		ht shoulder neck:
pre-existing co		U.S. T. II.		arm dourseldamus armanancià	-nent-nan-na	A STRUMEN, USLA
		es who ma	by he called by respondent at tri	al: All Claimant's witnesses; All prev	antly andored with	ssos Dr Garrell Walts
			y de called by respondent blue	nt. An Manufacture Statutes Lea, An pre-	and year against	23C3, FR. Mallell (Valls,
3. List all exhibits to 10/26/10	to be introd	uced at Iria	l: All Claimant's exhibits: All pre	viously endorsed exhibits: MEDICA	L RECORDS OF DR	ALAN MARTIN 6/21/99
4. Respondent he	ereby certifie	s that a co	py of the medical report written	by Dr.	and dated	
was malled, to	getner with a	copy of in	is motion to Opposing party/Co	unsei.	१ रहें हैं	
	<del></del>		<del></del>	WITNESSES, EXHIBITS AND		
declare under per orrect and comple	naity of perj. ete. Any pe	ury that i h rson who	nave examined all statements commits workers' compensat	contained herein, and to the besi ion fraud, upon conviction, shall	t of my knowledge an be guilty of a felony.	d belief, they are true,
			IAS BEEN SENT TO:		ay of September	
Opposing Party					<u>(</u> (-2) <1.45.3	·
Address (Number				Signature of Filing Party	Ibe	·
P.O:Box 35346		ato	7ln Code	Address (Number & Street) P. Q. 80x 1710		
Tulsa	, 0		Zip Code 74153-0346	City Sta Tulsa	te Zip C OK	ode 74101-1710
p <sub>1</sub> 1580-79 V	ia ta	XXI	ieg. mail	Telephone # of Filing Party (918) 382-1400		·
·			· ·	Print or type name of Attome Jennifer A. Sloan	y 	OBA# 19846

Print or type name of Attorney Jennifer A. Sloan



In re claim of:

#### WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS SPACE FOR COURT USE ONLY

Send original to
Workers' Compensation Court and 1 copy to
Claimant or the Claimant's Attorney of Record

Full Name of Injured Employee (Clair SONYA D. LANGE	mant)	
Claimant's Social Security Number ( 6953	LAST 4 DIGITS ONLY)	WCC FILE NO.  2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC		Date of Injury 09/01/2010
Employer's Insurance Carrier, Permit # for C Risk Group, Uninsured OLD REPUBL	Court Approved Individual Self-Insured or Own IC INSURANCE	O/ONE DE LA CONTRACTION DEL CONTRACTION DE LA CO
	ss certain workers' compensation disputes. Please type or Print)	For information, call (405) 522-8760 or in-state toll free (800) 522-8210.
X	. Was claimant at the time of the alleger	d injury, an employee of the above named respondent?
X	. Was claimant covered by the Workers	
X		ury or suffer an occupational disease arising out of and in the course of the employment?
X 4	. Has claimant filed a Form 3 within the	statutory period of time?
X	Did respondent, at the time of the alleg named in the caption above?	ged injury, have an own-risk permit or a compensation insurance policy with the carrier
X6	. Did claimant timely notify respondent	of the injury?
X	. Has claimant been provided medical tr	reatment?
8	. Has respondent commenced payment of	of temporary total disability payments to claimant?
	Temporary total disability has been partecal of week	id to claimant from to for a ss in the total sum of S
X9	Has respondent selected a treating physician is <u>Dr. Wans</u>	sician? (name of treating physician).
(ALL DE	POSITIONS OF MEDICAL EXPER	TS SHALL BE COMPLETED PRIOR TO TRIAL.)
•	0. Is rate an issue? Claimant's compensat	
<ol> <li>State all affirmative defenses: Reso DENY NECK</li> </ol>	erve the right to add additional defenses upo	on completion of discovery; DENY RIGHT FLBOW; DENY RIGHT SHOULDER;
2. List the name of all witnesses who	may be called by respondent at mai: All Ci	laimant's witnesses; All previously endorsed witnesses:
	trial: All Claimant's exhibits; All previous	
4. Respondent hereby certifies that a was mailed, together with a copy of	copy of the medical report written by Dr. C f this motion to Opposing party/Counsel	Jorrett Wans and dated 4-25-12
(LIST ON A S	EPARATE SHEET, ADDITIONAL	WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
declare under penalty of perjury that I have e vorkers' compensation fraud, upon conviction, HEREBY CERTIFY THAT A CO	examined all statements contained herein, and to t shall be guilty of a felony. PY HAS BEEN SENT TO:	the best of my browledge and belief, they are true, correct and complete. Any person who commits  Signed this 2/5+ day of August , 2012
Opposing Party Jack G. Zurawik	·	
Address (Number & Street) P.O. Box 35346		
City State Tulsa OK	Zip Code 74153-0346	
lp 1580-79 8/11		
8/11		Signature of Filing Many
•	·	Address (Number & Street) P. O. Box 1710
		City State Zip Code Tulsa OK 74101-1710
		Telephone # of Filing Party (918) 382-1400
•		Print or type name of Attorney OBA# Jennifer A. Sloan 19846

FORM 10

#### WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS SPACE FOR COURT USE ONLY

Send original to

Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record	
in re claim of:	
Full Name of Injured Employee (Claimant) SONYA D. LANGE	
	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT
Claimant's Social Security Number (LAST 4 DIGITS ONLY) 6953	WCC FILE NO. 2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury 09/01/2010
Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	
NOTE: Mediation is available to address certain workers' compensation disputes. Fo YES NO (Please type or Print)	r information, call (405) 522-8760 or in-state toll free (800) 522-8210.
X 1. Was claimant at the time of the alleged in	jury, an employee of the above named respondent?
2. Was claimant covered by the Workers' Co	ompensation Code?
3. Did claimant sustain an accidental injury * ADMIT RIGHT HAND ONLY	or suffer an occupational disease arising out of and in the course of the employment?
4. Has claimant filed a Form 3 within the st	atutory period of time?
S. Did respondent, at the time of the alleged named in the caption above?	injury, have an own-risk permit or a compensation insurance policy with the carrier
X 6. Did claimant timely notify respondent of	the injury?
X7. Has claimant been provided medical treat	iment?
•	emporary total disability payments to claimant?
•	to claimant from to for a n the total sum of S
9. Has respondent selected a treating physic The treating physician is Dr. Watts	ian? (name of treating physician).
(ALL DEPOSITIONS OF MEDICAL EXPERTS	SHALL BE COMPLETED PRIOR TO TRIAL.)
X10. Is rate an issue? Claimant's compensation	n rate; TTD PPD PPD
<ol> <li>State all affirmative defenses: Reserve the right to add additional defenses upon DENY NECK</li> </ol>	completion of discovery; DENY RIGHT ELROW; DENY RIGHT SHOULDER;
12. List the name of all witnesses who may be called by respondent at trial: All Clair	nant's witnesses; All previously endorsed witnesses;
3. List all exhibits to be introduced at trial: All Claimant's exhibits; All previously of	endorsed exhibits;
<ol> <li>Respondent hereby certifies that a copy of the medical report written by Dr. was mailed, together with a copy of this motion to Opposing party/Counsel.</li> </ol>	and dated,
	TNESSES, EXHIBITS AND MEDICAL EVIDENCE)
declare under penalty of perjury that I have examined all statements contained herein, and to the	
NOTIFE TO COMPENSATION FROM JUDIO CONVICTION, Shall be guilty of a felony.  HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this6th day of August, 2012
Opposing Party Jack G. Zurawik	
Address (Number & Street) P.O. Box 35346	
City State Zip Code Tulsa OK 74153-0346	
klp 1580-79 08/11	· Signatury of Din Carity
The second of th	Adoess (Number & Street
	P. J. Box 1710  Gity State Zip Code  Tulsa OK 74101-1710
	Tulsa OK 74101-1710  Telephone # of Filing Party (918) 382-1400
	Print or type name of Attorney OBA# Jennifer A. Sloan 19846

EXHIBIT "C"

From: Smith, Patty <Patty Smith@johnzink.com>;

.Fo: <sonyadawn@att.net>;

Subject: Termination Information Sent: Tue, Oct 9, 2012 5:20:38 PM

Dear Sonya,

You are currently off-site because of a medical restriction that prevents you from performing your job now or in the near future. In addition, you have exhausted all applicable leave under the Family and Medical Leave Act. As a result, we have made the business decision to terminate your employment.

We wish you the best for the future and remind you that you are welcome to apply for open positions we have once you are ready, willing and able to return to work.

Sincerely,

Patty Smith

### Patty R. Smith, PHR

Human Resources Leader

John Zink Company, LLC

11920 East Apache

Tulsa, OK 74121-1220

918-234-2938 (Office)

918-630-2339 (Mobile)



Case 4:14-cv-00268-JED-tlw Document 2 Filed in USDC ND/OK on 05/27/14 Page 33 of 300

EXHIBIT "D"

### BEFORE THE WORKERS' COMPENSATION COURT OF THE STATE OF OKLAHOMA

In re claim of:		WORKERS' COMPENSATION COURT STATE OF OKLAHOMA December 23, 2013
SONYA D LANGE	,	Joyce Sanders COURT CLERK
Claimant	)	COURT CLERK
	j	Court Number: 2012-07091A
JOHN ZINK CO LLC &/or KOCH INDUSTRIES INC	)	
Respondent	)	
	)	Claimant's Social Security
•	)	Number: xxx-xx-6953
OLD REPUBLIC INSURANCE CO &/or OLD	)	
REPUBLIC INSURANCE CO.	)	
Ins. Carrier	•	

# ORDER ON APPEAL AFFIRMING IN PART AND MODIFYING IN PART THE DECISION OF THE TRIAL COURT

On OCTOBER 25, 2013, this cause came on for hearing before the undersigned Judges, sitting as a panel, on appeal from the order of the Trial Judge heretofore entered on MAY 20, 2013.

After reviewing the record in this case, and being fully informed in the premises, said Judges find that parts of said order were against the clear weight of the evidence and hence the order of the Trial Judge heretofore entered in this case on MAY 20, 2013 should be and the same is hereby MODIFIED AND AFFIRMED AS FOLLOWS:

- I. VACATE PARAGRAPH 2 AND REMAND FOR TRIAL ON THE NECK. THIS MATTER IS REMANDED FOR DETERMINATION OF A NECK INJURY AND ANY ASSOCIATED BENEFITS.
- II. VACATE AND REMAND PARAGRAPH 3 FOR TRIAL JUDGE TO CONSIDER WHETHER CLAIMANT MET HER BURDEN OF PROOF ON THE CAUSE OF THE BILATERAL SHOULDER INJURIES. THE PANEL FINDS THAT THERE WAS OBJECTIVE EVIDENCE OF INJURY.



FILED

2012-07091A Page 2

The order filed herein on MAY 20, 2013, as modified, shall remain in full force and effect as the order of this Court.

Upon adoption of the foregoing order on the 28th day of OCTOBER, 2013, the roll was called and the following voted:

HIDGE ERIC WOLLANDT WE

HIDGE MARCARET ROMHOFE AVE

.

JUDGE CARLA SNIPES, AYE

../BWhite

A copy of the above and foregoing Court Order was mailed, by regular or certified United States Mail, on this filed stamped date to:

Claimant's Attorney:

JACK G ZURAWIK

PO BOX 35346

TULSA, OK 74153-0346

Respondent's Attorney:

JENNIFER A SLOAN

PO BOX 1710

TULSA, OK 74101-1710

I do hereby certify that the above and foregoing is a true and correct copy of the original order signed by the Judge herein. Witness by my hand and the official seal of this court on this date.

Court Clerk

December 23, 2013

#### BEFORE THE WORKERS' COMPENSATION COURT OF THE STATE OF OKLAHOMA

In re claim of:	WORKERS' COMPENSATION COURT STATE OF OKLAHOMA
SONYA D LANGE	May 20, 2013 Joyce Sanders COURT CLERK
Claimant	) ) Court Number: 2012-07091A
JOHN ZINK CO LLC	)
Respondent	)
OLD REPUBLIC INSURANCE CO Ins. Carrier	) Claimant's Social Security ) Number: xxx-xx-6953

FILED

#### ORDER DETERMINING COMPENSABILITY

Now on this 15th day of MAY, 2013, this cause comes on for consideration pursuant to regular assignment and hearing on MAY 7, 2013, before JUDGE OWEN T EVANS, at Tulsa, Oklahoma, at which time claimant appeared in person and by counsel, JACK G ZURAWIK and respondent and insurance carrier appeared by counsel, JENNIFER A SLOAN.

The Court having considered the evidence and records on file, and being well and fully advised in the premises FINDS AND ORDERS AS FOLLOWS:

\_ 1 \_

THAT claimant was employed by the above named respondent and such employment was subject to and covered by the provisions of the Workers' Compensation Act of the State of Oklahoma; and on SEPTEMBER 1, 2010, claimant became aware he/she had sustained accidental personal injury as a result of cumulative trauma to the RIGHT HAND, LEFT HAND, RIGHT ARM, and LEFT ARM arising out of and in the course of claimant's employment. Claimant's last injurious exposure to said trauma was on JULY 24, 2012. The major cause of claimant's compensable cumulative trauma injury was repetitive work as staff accountant in ergonomically incorrect work station.

-2-

THAT claimant's allegation of injury to the NECK, RIGHT SHOULDER AND LEFT SHOULDER is denied. Claimant's work did not constitute the major cause of alleged injuries to the NECK, RIGHT SHOULDER AND LEFT SHOULDER. Additionally, claimant suffers pre-existing conditions of NECK, RIGHT SHOULDER AND LEFT SHOULDER.

2012-07091A Page 2

- 3 -

THAT the court deviates from the opinion of Dr. Feild as it relates to bilateral shoulders. Objective medical evidence does not support cumulative trauma injury to the shoulders..

- 4 -

THAT FOR THIS HEARING ONLY, the rates of compensation are \$594.41 per week for temporary total disability and \$323.00 per week for permanent partial disability.

- 5 -

THAT claimant's request for temporary total disability compensation benefits from JULY 24, 2012 to JANUARY 3, 2013 is denied.

-6-

THAT respondent's request for credit against temporary total disability liability of short term disability payments received is denied..

-7-

THAT determination of underpayment and/or overpayment of temporary total disability compensation is reserved for future hearing.

- 8 -

THAT respondent and/or insurance carrier shall provide the claimant with reasonable and necessary medical treatment to the hands and arms with a doctor of respondent's selection. Respondent is ordered to authorize said medical care within 20 days of the filing date of this order.

BY ORDER OF:

OWEN TEVANS, JUDGE

nj/BWhite

2012-07091A Page 3

A copy of the above and foregoing Court Order was mailed, by regular or Certified United States Mail, on this filed stamped date to:

Claimant's Attorney:

JACK G ZURAWIK

PO BOX 35346

TULSA, OK 74153-0346

Respondent's Attorney:

JENNIFER A SLOAN

PO BOX 1710

TULSA, OK 74101-1710

I do hereby certify that the above and foregoing is a true and correct copy of the original order signed by the Judge herein. Witness by my hand and the official seal of this court on this date.

SEAL

Court Clerk May 20, 2013

013

#### **SUMMONS**

#### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA, 500 SOUTH DENVER, TULSA, OKLAHOMA 74103

Sonya D. Lange	J-2014-00257
Plaintiff(s)	Attorney(s) for Plaintiff(s)
John Zink, LLC	Name Address / 874 S. Kou Icher
	- Tulsa, OK 74119
Defendant(s)	Telephone 9/8-583-8900
	Cartified Hail
John Zink, LEC.	11 11/15/2010
To the above-named Defendant(s)	Appointed to serve. PSL # 10/15/0000
The Corp. Co. CO. 1833 S. Morgan Ped.	Authorized by / in Selfsin
You have been sued by the above named plaintiff(s), and y	ou are directed to file a written answer to the attached petition
of service. Within the same time, a copy of your answer must	
you answer the petition within the time stated judgment will	be rendered against you with costs of the action.
Issued this day of , 20/	
	Saily Howe Smith, Court Clerk
	Deputy/Court Clerk
	The second of the second
(Seal)	
This summons and order was served on	
	(date of service)
	(Signature of person serving summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

**EXHIBIT 2** 

IN THE DIST S	RICT COURT OF TULSA CO TATE OF OKLAHOMA	DUNTY DISTRICT COURT
SONYA D. LANGE,	)	FEB 1 4 2014
Plaintiff, vs.	) ) Case No. CJ-2 ) Judge Daman (	014-357 SALLY HOWE SMITH, COURT CLERY O14-357 STATE OF OKEA. TULSA COUNTY Cantrell
JOHN ZINK CO., LLC, a Foreign L Liability Company,	imited )	
Defendant.	)	

#### ENTRY OF APPEARANCE

Kristen L. Brightmire and Sierra G. Salton with Doerner, Saunders, Daniel & Anderson, L.L.P., file their appearance on behalf of Defendant John Zink, Co., LLC.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA)No. 14239 Sierra G. Salton, OBA No. 31212 Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117 Telephone (918) 591-5204 Facsimile (918) 925-5204

kbrightmire@dsda.com ssalton@dsda.com

Attorneys for Defendant

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 14, 2014, a true and correct copy of the above and foregoing instrument was hand delivered, to:

Tip Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Kristen L. Brightmire

2980287v1

IN THE D	DISTRICT COURT OF TULSA COUNT STATE OF OKLAHOMA	FEB 1 9 2014
SONYA D. LANGE,	) sa	ALLY HOWE SMITH, COURT CLERK STATE OF OKLA, TULSA COUNTY
Plaintiff,	)	MALE OF ORLA. TULSA COUNTY
vs.	) Case No. CJ-2014-3 Judge Daman Cantr	•
JOHN ZINK CO., LLC,		
Defendant.	)	
	, <b>)</b>	

#### ANSWER AND AFFIRMATIVE DEFENSES

John Zink Co., LLC ("John Zink") for its Answer and Affirmative Defenses to the Petition filed by Plaintiff herein, states as follows:

#### **ANSWER**

#### PARTIES, JURISDICTION AND VENUE

- 1. Defendant is without sufficient information to admit or deny the allegations set forth in paragraph 1 of Plaintiff's Petition and therefore denies the same.
- 2. Defendant admits it is a limited liability company organized under the laws of Delaware, conducting business in Tulsa County, Oklahoma, but denies any remaining allegations contained in paragraph 2 of Plaintiff's Petition.
- 3. Defendant admits the events alleged therein occurred in Tulsa County, Oklahoma, but does not admit that all events alleged did occur and denies any remaining allegations in paragraph 3 of Plaintiff's Petition.
- 4. Paragraph 4 of Plaintiff's Petition makes allegations of jurisdiction and, therefore, requires no response.

## COUNT 1: WRONGFUL DISCHARGE – 85 O.S. §341

5. Defendant admits the allegations contained in paragraph 5 of Plaintiff's Petition.

- 6. Defendant admits Plaintiff was an employee when she reported an on-the-job-injury occurring on or about September 1, 2010, and pursued a claim with the Oklahoma Workers' Compensation Court, but denies any remaining allegations in paragraph 6 of Plaintiff's Petition.
- 7. Defendant admits that Plaintiff's employment was terminated on or about October 5, 2012, but denies the remaining allegations in paragraph 7 of Plaintiff's Petition. The October 9, 2012 email attached as an exhibit to Plaintiff's Petition was confirmation of the earlier October 5, 2012 termination by phone.
- 8. Defendant admits that Plaintiff was terminated from employment, but denies the remaining allegations in paragraph 8 of Plaintiff's Petition.
  - 9. Defendant denies the allegations contained in paragraph 9 of Plaintiff's Petition.
  - 10. Defendant denies the allegations contained in paragraph 10 of Plaintiff's Petition.
  - 11. Defendant denies the allegations contained in paragraph 11 of Plaintiff's Petition.

#### COUNT II: NEGLIGENT HIRING, SUPERVISION AND RETENTION

12. No answer to paragraphs 12-14 of Plaintiff's Petition is required because a motion to dismiss this count is being filed herein contemporaneously. To the extent a further response is required, Defendant denies all allegations in paragraphs 12-14 of Plaintiff's Petition.

#### COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

- 13. Defendant denies the allegations contained in paragraph 15 of Plaintiff's Petition.
- 14. Defendant denies the allegations contained in paragraph 16 of Plaintiff's Petition.

WHEREFORE, having fully answered, John Zink respectfully requests that the Plaintiff take nothing by way of her Petition; that judgment be granted in favor of John Zink.; that John Zink be awarded its costs; and for such other and further relief as the Court deems just and equitable.

#### **Affirmative Defenses**

Defendant John Zink, for its affirmative defenses to the Petition filed by the Plaintiff herein, alleges and states as follows:

- 1. The Petition fails to state a claim upon which relief may be granted.
- 2. Attorneys' fees are not recoverable in this case.
- 3. Plaintiff failed to comply with OKLA. STAT. tit. 12, § 19.1 (as set forth in the motion to dismiss being filed contemporaneously) and so has failed to properly plead Count II of the Petition.
  - 4. Plaintiff seeks damages and/or remedies not recoverable at law.
- 5. The decisions and actions taken by Defendant regarding Plaintiff's employment were based upon legitimate, non-retaliatory business reasons.
- 6. Defendant's actions were taken in good faith, without malice or reckless indifference, and should not subject it to punitive damages.
  - 7. Plaintiff has failed to adequately and reasonably mitigate alleged damages.
- 8. Defendant reserves its right to amend its affirmative defenses upon the discovery of additional information.

WHEREFORE, having fully answered and asserted its affirmative defenses, John Zink respectfully requests that the Plaintiff take nothing by way of her Petition; that judgment be granted in favor of John Zink; that John Zink be awarded its costs; and for such other and further relief as the Court deems just and equitable.

Respectfully submitted,
DOERNER, SAUNDERS, DANIEL &
ANDERSON, L.L.P.

Bv:

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212 Two West Second Street, Suite 700 Tulsa, Oklahoma 74103-3117 Telephone (918) 591-5204 Facsimile (918) 925-5204 kbrightmire@dsda.com ssalton@dsda.com

Attorneys for Defendant

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 19, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Sierra G. Salton

2980439v1

# FILED

# IN THE DISTRICT COURT OF TULSA COUNTY FEB 1 9 2014

SONYA D. LANGE,	) SALLY HOWE SMITH, COURT CLER STATE OF OKLA, TULBA COUNTY
PLAINTIFF,	j
VS.	Case No. CJ- 2014-00357
JOHN ZINK CO., LLC.,	Case No. CJ- 2014-00357 Judge Daman Cantrell
DEFENDANT.	<b>)</b>
·	)

### DEFENDANT'S MOTION TO DISMISS COUNT II OF THE PETITION, DISMISS PLAINTIFF'S PRAYER FOR ATTORNEY FEES, AND BRIEF IN SUPPORT

Plaintiff Sonya Lange alleges John Zink Company, LLC, violated Oklahoma law by terminating her employment due to her filing of a Worker's Compensation claim.

John Zink moves to dismiss Count II of the Petition alleging negligent hiring, supervision, and retention. Should the Court grant this motion, the claims remaining would include: (1) a claim for retaliatory discharge under the workers' compensation statutes and (2) a claim for intentional infliction of emotional distress. Additionally, John Zink moves this court to dismiss Plaintiff's prayer for attorneys' fees, as such are not recoverable under Oklahoma law in either traditional tort actions or retaliatory discharge claims.

#### ARGUMENTS AND AUTHORITIES

I. Count II should be dismissed because Plaintiff failed to submit an affidavit of merit as required by Oklahoma law.

Plaintiff's claim for negligent hiring, supervision, and retention should be dismissed due to her failure to attach the required affidavit of merit as an exhibit to the petition. OKLA. STAT. tit. 12, § 19.1.

Section 19.1, requires that a "civil action for negligence wherein the plaintiff shall be required to present the testimony of an expert witness to establish breach of the relevant standard of care..." *must* be accompanied by an affidavit of merit. The affidavit must attest the following:

- a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,
- b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the determination of the expert that, based upon a review of the available material including, but not limited to, applicable records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the defendant against whom the action is brought constituted negligence, and
- c. on the basis of the review and consultation of the qualified expert, the plaintiff has concluded that the claim is meritorious and based on good cause.

Id. at  $\S 19.1(A)(1)(a-c)$ .

Any civil action for negligence that is not filed with the affidavit attached to the petition must be dismissed without prejudice, upon motion of the defendant. Oklahoma law mandates that, "[i]f the civil action for negligence is filed...without an affidavit being attached to the petition, as required....and no extension of time is subsequently granted by the court...the court shall, upon motion of the defendant, dismiss the action without prejudice to its refilling." Id. at § 19.1 (A)(2)(a-b) (emphasis added).

Section 19.1 applies to this case. Plaintiff has alleged an action for negligent hiring, supervision and retention. In the tort of negligence, the plaintiff must prove (i) there was a duty of care owed to her by the defendant, (ii) that defendant breached that duty, and (iii) the breach of that duty directly resulted in injury to her. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 12, 160 P.3d 959. Plaintiff claims that John Zink owed her the

duty to hire competent supervisors and managers properly trained and supervised in state Workers' Compensation laws, rights and responsibilities and to supervise its supervisors and managers; further, to terminate its supervisors and managers that that violated the terms and provisions of the law applicable to the allegations contained in this Petition.

Petition at ¶ 13. "The existence of a duty of care is the threshold question in any negligence action." Lowery, at ¶ 12. As John Zink will contest any such duty is owed and as Plaintiff cannot establish any such duty through her own testimony, Plaintiff will undoubtedly need an expert¹ to establish the applicable standard of care, i.e. what duty does an Oklahoma employer owe its employees in this situation?

Plaintiff may argue that Section 19.1 applies only to claims of professional negligence. This is not so. In *Wall v. Marouk*, 2013 OK 36, 302 P.2d 775, the Oklahoma Supreme Court declared Section 19 (the predecessor to Section 19.1) unconstitutional due to its violation of the Oklahoma Constitution's prohibition on special laws. Because Section 19's affidavit requirement *only* applied to claims of professional negligence, the Court admonished this distinction: "[Section 19] creates two classes, those who file a cause of action for negligence generally, and those who file a cause of action for professional negligence." *Id.* at ¶4. This dissimilar treatment of professional negligence claims resulted in an impermissible special law in violation of Article 5 Section 45 of the Oklahoma Constitution. Due in part to its status as a special law, Section 19 was declared unconstitutional. In order to address the concerns raised by the Oklahoma Supreme Court, the Oklahoma Legislature, in a 2013 special session, revised the prior law and required a pre-filing expert affidavit in *all* civil negligence cases that require "the testimony of an expert

<sup>&</sup>lt;sup>1</sup> Experts may be qualified by their "knowledge, skill, experience, training or education" and may testify if their opinions are "based upon sufficient facts," "the product of reliable principles," and the person "has applied the principles … reliably to the facts of the case." OKLA. STAT. tit. 12, § 2702. Under this statute, the Oklahoma Supreme Court has, for example, qualified nurses as experts as to the standard of care in the treatment of bedsores. *Gaines v. Comanche County Medical Hospital*, 2006 OK 39, 143 P.3d 203 (registered nurse offered expert testimony as to the standard of care in the avoidance, care and cause of bedsores).

witness to establish breach of the relevant standard of care and that such breach of duty resulted in harm to the plaintiff".

Plaintiff has alleged John Zink breached its duty of care owed to her – a duty of care which will be disputed. Plaintiff can only prove such a duty through the presentation of expert testimony. As such, Section 19.1 is applicable, and Plaintiff's failure to attach the Section 19.1 affidavit requires that Count II be dismissed.

II. The Court should enter judgment in favor of John Zink of Plaintiff's prayer for attorneys' fees because such are not recoverable under the traditional tort claims of negligence and intentional infliction of emotional distress.

Plaintiff alleges claims for negligent hiring, supervision and retention, as well as intentional infliction of emotional distress. Under Oklahoma law, attorneys' fees are not recoverable under these traditional tort claims. "Oklahoma remains 'firmly committed' to the American Rule that provides, "[e]xcept where a statute or contract provides otherwise, every litigant is responsible for its own litigation expenses, including the attorney's fee." Morgan v. Galilean Health Enter., 1998 OK 130, ¶11, 977 P.2d 357, 362. No contractual obligation for the payment of an attorney's fee in this case was ever created between Plaintiff and John Zink. Hence, Plaintiff may secure attorneys' fees for negligent hiring and intentional infliction of emotional distress only if that award is authorized by statute.

Defendant could find no statute allowing recovery of fees for either the tort of negligent hiring, supervision, and retention or the tort of intentional infliction of emotional distress. Thus, Plaintiff's claim should be dismissed.

III. The Court should enter judgment in favor of John Zink of Plaintiff's prayer for attorneys' fees because such are not recoverable in a Workers' Compensation retaliatory discharge claim.

Plaintiff alleges that on or about September 1, 2010, she sustained an on-the-job injury. Plaintiff claims she was discharged because of that injury and her filing of a workers'

compensation suit in violation of Oklahoma law. The Oklahoma Workers' Compensation Act provides that an employer which violates OKLA. STAT. tit. 85, § 341 "shall be liable . . . for reasonable damages, actual and punitive if applicable, suffered by an employee as a result of [a] violation." § 341(E).

In Webb v. Dayton Tire and Rubber Co., 1985 OK 7, 697 P.2d 519, the Oklahoma Supreme Court affirmed a ruling of the Oklahoma County District Court granting the defendant's motion to strike the plaintiff's prayer for attorney's fees in a retaliatory discharge claim brought pursuant to the Oklahoma Workers' Compensation Act. ¶¶ 3-4. The Oklahoma Supreme Court stated:

It is well settled in Oklahoma, with narrow exception, that attorney fees are not recoverable by a prevailing party in absence of statute or enforceable contract expressly authorizing same. Keel v. Covey, 206 Okl. 128, 241 P.2d 954 (Okl.1952). The present suit was brought to recover damages for retaliatory dismissal pursuant to 85 O.S.1981 § 5-7. A retaliatory dismissal suit is not an action to recover for labor or services within the meaning of 12 O.S.1981 § 936, as urged by Webb. The statutory penalty provided for tortious discharge under 85 O.S.1981 § 6 is reasonable damages; and, there is nothing in the record to bring the question within the exception established in City Nar'l Bank and Trust Co. v. Owens, 565 P.2d 4 (Okl.1977), where defendant was awarded attorney fees by reason of the plaintiff's misconduct of trial proceedings at defendant's expense.

Id. at ¶ 5 (emphasis added). The Oklahoma Workers Compensation Act does not authorize the recovery of attorneys' fees for a retaliatory discharge claim. See § 341(E). Like the former § 6, § 341(E) only provides for the recovery for reasonable damages, actual and punitive. Id. As a matter of law, Plaintiff is not entitled to the recovery of attorneys' fees on her retaliatory discharge claim.

#### CONCLUSION

For the reasons set forth herein, Defendant John Zink respectfully requests this Court to dismiss Plaintiff Sonya Lange's claims under Count II of her Petition and to dismiss Plaintiff's prayer for attorneys' fees.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Bv:

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212 Two West Second Street, Suite 700 Tulsa, Oklahoma 74103-3117 Telephone (918) 582-1211 Facsimile (918) 591-5360 kbrightmire@dsda.com ssalton@dsda.com

Attorneys for Defendant

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 19, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Sierra G. Salton

2980299v1

	T COURT OF TULSA COUNTY F L E D TE OF OKLAHOMA  MAR - 6 2014
SONYA D. LANGE,	)
Plaintiff,	) SALLY HOWE SMITH, COURT CLERK ) STATE OF OKLA, TULSA COUNTY
vs.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	
Defendant.	) )

# RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL DISMISSAL

#### I. Introduction

COMES NOW the Plaintiff, Sonya D. Lange ("Lange"), and responds in Opposition to Defendant's, John Zink Co., LLC, ("Zink"), Motion to Dismiss Petition Count II, negligent hiring, supervision and retention, and Petition prayer for attorney fees. Without benefit of supporting case authority, Zink's Motion would have this Court break new ground and set precedent by requiring an expert consultation affidavit in a non-professional negligence case. Further, at this early stage, prior to any discovery responses, on a contract issue, Zink urges dismissal of a prayer for attorney fees. On both issues Zink failed to meets its burden as the moving party and the Motion to Dismiss should be denied.

In this wrongful employment termination case, Lange, a long time employee of Zink, suffered serious on-the-job injuries, sought medical attention, pursued a state Workers' Compensation claim, was taken off work by treating physicians for the work

injuries (temporarily totally disabled) and, while off work under protection of law, was fired by Zink due to absence and pursuit of a Workers' Compensation claim. 85 O.S. §341(A) & (B). See Petition ¶ 5, 6, 7, 8 and 9.

Lange's Petition Count II alleges that Zink's supervisors and managers were aware of her on-the-job injuries, Workers' Compensation claim, work restrictions and work release(s), yet fired her in violation of the law. 85 O.S. §341(A)(B). Lange alleges that Zink was negligent because its managerial employees who fired her were hired, supervised and retained by Zink without proper knowledge or training so that they were unaware of, or failed to apply, the law that protected Lange against termination. Petition ¶ 10, 12 and 13.

Zink urges application of 12 O.S. §19.1 to Petition Count II, negligent hiring, supervision and retention. This statute is not applicable by its terms because an expert's testimony is not *required* to establish the standard of care. Zink's Motion should be denied.

Zink also argues that Lange's prayer for relief in the form of attorney fees should be dismissed. However, discovery has only begun and Lange has yet to discover if a contract of employment existed and was violated. Zink's Motion is premature and should be denied.

#### A. Standard & Burden

Motions to Dismiss are generally looked upon with disfavor. The Court must determine whether relief is possible against Zink "under any set of facts that could be proved consistent with the pleadings' allegations." <u>Lockhart v. Loosen</u>, 1997 OK 103,

943 P2d 1074. When reviewing a Motion to Dismiss, the Court "must take as true all of the pleading's allegations together with all reasonable inferences which may be drawn from them." ... "Furthermore, the burden to show the legal insufficiency of the petition is on the party moving for dismissal ..". Fanning v. Brown, 2004 OK 7, ¶4, 85 P. 3d 841 and Wilson v. Still, 1991 OK 108, 819 P2d 713. (emphasis added).

Zlnk's Motion must be <u>denied</u> unless it appears beyond doubt that Lange can prove no set of facts which would entitle her to relief. 12 O.S. §2012, committee comment; <u>Brock v. Thompson</u>, 1997 OK 127, 948 P2d 279, 284 and <u>Lockhart</u>, 943 P2d at 1078. The Petition "must not be dismissed … unless the allegations indicate beyond any doubt that the litigant can prove <u>no</u> set of facts which would entitle him to relief." <u>Frazier v. Bryan Memorial Hospital Authority</u>, 1989 OK 73, 775 P2d 281, 287. This Court "should not ask whether the petition points to an appropriate statute or legal theory, but whether relief is possible <u>under any set of facts</u> that could be established consistent with the allegations." <u>Indiana National Bank v. State ex rel. Dept. of Human Services</u>, 1994 OK 98, 880 P2d 371, 375-76.

Finally, if the Court finds that a claim has been defectively stated, as opposed to does not exist, a plaintiff should be given an opportunity to amend the Petition. <u>Fanning</u> v. <u>Brown</u>, 2004 OK 7, ¶ 23, 85 P.3d 841, 848. 12 O.S. §19.1(B)(1).

# II. Affidavit of Expert Consultation

A. 12 O.S. §19.1 Not Applicable - Expert Not Required

The Count for negligent hiring, supervision and retention does not require the use of an expert witness to establish a standard of care breach. Zink did not cite any cases

to support its proposition that this negligence theory requires expert testimony. Zink failed to meet its burden. Fanning v. Brown, 2004 OK 7, ¶4. Zink is asking this Court to break new ground by applying 12 O.S. §19.1 to a non-professional negligence count. Zink is, in effect, urging the application of 12 O.S. §19.1 to all negligence cases. Zink's argument is contrary to the actual language of 12 O.S. §19.1, which clearly applies only to negligence cases *requiring expert testimony*:

"wherein the plaintiff **shall be required** to present testimony of an expert witness to establish breach of the relevant standard of care ...

12 O.S. §19.1(A)(1) (emphasis added)

Nothing in Oklahoma's jurisprudence requires a claim of negligence associated with an employer's hiring, supervision and retention be supported by an expert.

Granting Zink's Motion would create an additional burden upon a plaintiff that the statute did not envision.

In Oklahoma courts, an expert may testify "[I]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,...". 12 O.S. §2702. The cause of negligent hiring, supervision and retention was recognized in Mistletoe Express Service, Inc. v. Culp, 1959 OK 250, 353 P.2d 9. Issues regarding the employment relationship and "negligent-hiring-and-retention" were submitted to the jury, without benefit of expert testimony. Jordan v. Cates, 1997 OK 9, 935 P.2d 289, 292. The critical element is the employer's knowledge. N.H. v. Presbyterian Church, 1999 OK 88, 998 P.2d 592, 600.

Zink's Motion failed to meet its burden by citing any case wherein a witness with "scientific, technical or other specialized knowledge" was required in a case of negligent hiring, supervision and retention.

When a topic requires special experience, testimony from a person with that experience may be received by the court. Randolph v. Collectramtic, Inc., 590 F.2d 844, 848 (10<sup>th</sup> Cir. 1979). When common knowledge or experience is extensive enough to recognize or infer negligence from the facts, expert testimony is not required, even in a professional negligence case. Boxberger v. Martin, 1976 OK 78, 552 P.2d 370, 373.

Oklahoma courts have not required scientific, technical or specialized knowledge in a case of negligent hiring, retention and supervision. Jurors' common knowledge and experience is sufficient to infer negligence from the facts.

In addition, and in the alternative, in an abundance of caution, if this Court found that expert testimony was required on Petition Count II, the appropriate remedy would not be to dismiss the claim. Instead, Lange would request the Court should allow her ninety (90) days to acquire an expert affidavit. 12 O.S. §19.1(B)(1).

# B. 12 O.S. § 19.1 Unconstitutional Money Barrier to Court Access Guaranteed by Art. 2, § 6 Oklahoma Constitution

In the unlikely event that this Court applies 12 O.S. §19.1 to Petition Count II, the statutory requirement for the payment of professional expert witness services as a prerequisite to the filing of a petition alleging non-professional negligence violates the right of access to the Courts guaranteed by Art. 2, § 6 of the Oklahoma Constitution, which provides:

The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

The clear language of Art. 2, § 6 requires that the Courts must be open to all, on the same terms and without prejudice. *E.g., Thayer v. Phillips Petroleum Co.*, 1980 OK 95, 613 P.2d 1041, 1044-45 ("It has long been recognized that equal access to the courts, and modes of procedure therein, constitute basic and fundamental rights. **The courts must be open to all on the same terms without prejudice**") (emphasis added). The framers of the Constitution intended that all individuals, without partiality, could pursue an effective remedy designed to protect their basic and fundamental rights. Access to Courts must be available to all through simple and direct means and the right must be administered in favor of justice rather than being bound by technicalities. Claimants may not have the fundamental right of Court access withheld for non-payment of some liability or conditioned on coercive collection devices. A statute that so conditions one's right to litigate impermissibly denies equal protection and closes the court house doors to those financially incapable of obtaining a pre-petition opinion.

The statute contains an indigency provision. But, for plaintiff's not qualifying for indignecy, but still of limited and humble means, their access to the courts on even non-professional negligence cases is limited and harmed by this statutory requirement of an expert consultation. Because 12 O.S. § 19.1 violates Art. 2, § 6 of the Oklahoma Constitution, Zink's Motion to Dismiss should be denied.

#### III. Attorney Fees As Relief

Zink also seeks dismissal of a "claim" for attorney fees, on the Petition's statutory and common law counts. There is only a prayer for relief that includes attorney fees. "A plaintiff is required neither to identify a specific theory of recovery nor to set out the correct remedy or relief to which he (or she) may be entitled. A motion to dismiss should be denied if relief is possible under any set of facts which can be established and is consistent with the allegations." <u>Kirby v. Jean's Plumbing Heat & Air</u>, 2009 OK 65, ¶5, 222 P.2d 21.

Lange is attempting to ascertain whether or not a contract existed between the parties for employment through her discovery requests. If a contact existed, a breach would entitle the damaged party to attorney fees. Morgan v. Galilean Health Enterprises, 1998 OK 130, 977 P.2d 357. This case was recently filed on January 28, 2014. Zink was served the Petition and Lange's First Set of Discovery Requests on January 30, 2014. Discovery in this case on the issue of whether or not a contract for employment existed is still outstanding and not completed. Zink's Motion to dismiss attorney fees as a form of relief is premature and therefore must be denied.

#### IV. CONCLUSION

WHEREFORE, the Plaintiff, Sonya D. Lange, prays that Defendant's, John Zink Co., LLC, Motion to Dismiss Count II and prayer for relief in the form of attorney fees be DENIED. In the alternative, Lange requests ninety (90) days to acquire an affidavit of expert consultation relevant to Count II. 12 O.S. §19.1(B)(1).

Respectfully Submitted,

Tim Gilpin, OBA #11844
GILPIN LAW OFFICE
1874 South Boulder
TULSA, OK 74119
(918) 583-8900 telephone
(918) 796-5724 fax
timgilpin@gilpinlaw.net
Attorney for Sonya D. Lange

### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

186

2014.

Tim Gilpin

# IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	)	DISTRICT COURT
Plaintiff,	)	FILED
VS.	) Case No. CJ-2014-357	MAR 2 4 2014
JOHN ZINK CO., LLC,	) Judge Daman Cantrell )	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
Defendant.	)	•

#### MOTION FOR LEAVE TO FILE REPLY BRIEF

Pursuant to Rule CV18, Defendant John Zink Co., LLC ("John Zink") requests this Court grant them leave to file a reply brief in support of its Motion to Dismiss.

- 1. On February 19, Defendant filed a motion to dismiss *inter alia* Plaintiff's prayer for attorneys' fees on all claims she raised: retaliatory discharge under the workers' compensation statute and the tort claims of negligence and intentional infliction of emotional distress.
- 2. On March 6, Plaintiff filed her response. The basis of the response as to the attorneys' fees claim was that she was "attempting to ascertain whether or not a contract existed between the parties for employment through her discovery requests." Plaintiff then noted that the discovery requests were outstanding. Pl. Resp. at 7.
- 3. The parties exchanged discovery responses March 17. Based in large part upon its review of those discovery responses, Defendant would like to file a short reply addressing its motion to dismiss Plaintiff's prayer for attorneys' fees. (Defendant will not be addressing its motion to dismiss Count II of Plaintiff's Petition.)
- 4. On March 20, Defendant's counsel contacted Plaintiff's counsel to see if he had an objection to the filing of this motion. Defendant's counsel was advised he was out of the

office, so she sent an email that day hoping to reach him. Ex. 1. This was the tenth day. OKLA. STAT. tit. 12, § 2006(A).

- 5. Plaintiff's counsel responded to the email on Saturday, March 22. Plaintiff objects to this motion on the sole basis that the motion will be filed outside the ten day window. To ensure that we do not misstate his objection, it is attached. Ex. 2.
- 6. Defendant appreciates its request is just beyond the ten days usually set for such requests for leave to file a reply brief. Rule CV 18. However, because Plaintiff's response was tied to discovery responses and because Defendant did not have an opportunity to review those discovery responses until the week of March 17, it did not know whether a reply was warranted prior to its review of discovery. Defendant contacted Plaintiff's counsel on the tenth day. Plaintiff's counsel was out of town on that day and apparently the next day. Thus, this motion was delayed two business days due to his absence. Had Plaintiff's counsel been available on the day he was initially contacted, he would have had no objection to lodge.
- 7. At this time, Defendant believes a brief reply would aid the Court in its disposition of the motion to dismiss Plaintiff's prayer for attorneys' fees.

A proposed order is submitted herewith granting Defendant leave to file its reply brief within five days of entry of the Court's order.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239
Sierra G. Salton, OBA No. 31212
Two West Second Street, Suite 700
Tulsa, Oklahoma 74103-3117
Telephone (918) 591-5204
Facsimile (918) 925-5204
kbrightmire@dsda.com
ssalton@dsda.com

Attorneys for Defendant

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 24, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

3013657v1

Kristen L. Brightmire

From:

Salton, Sierra G.

Sent:

Thursday, March 20, 2014 3:29 PM

To:

'timgilpin@gilpinlaw.net'

Cc:

Brightmire, Kristen L.

Subject:

Sonya Lange v. John Zink [IWOV-Active.FID322302]

Good afternoon,

We are going to file a motion for leave to file a reply brief regarding our motion to dismiss Count II of the Petition and Plaintiff's Prayer for Attorney Fees. Do you have any objection?

Please let me know.

Best,

Sierra Salton



#### Sierra G. Salton | attorney

Two West Second Street, Suite 700 | Tulsa, OK 74103-3117 | p: 918.S91.S236 | f: 918.925.5236 ssalton@dsda.com | www.dsda.com

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TAX NOTICE: This communication may contain federal tax advice. IRS regulations require us to advise you that unless expressly stated otherwise, nothing in this communication was intended or written to be used and cannot be used or relied upon by any taxpayer to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the firm's tax attorneys if you have any questions regarding federal tax advice

From:

Tim Gilpin <timgilpin@gilpinlaw.net> Saturday, March 22, 2014 6:09 PM

Sent: To:

Salton, Sierra G.

Subject:

Sonya Lange v. John Zink - Objection

Ms. Salton:

I just returned to town last night. Plaintiff OBJECTS to your application for leave to file a Reply Brief. Plaintiff's Response Brief in Opposition to the Motion to Dismiss was filed March 6, 2014. Local Rule CV 18 requires that reply briefs are only permitted by leave of court by application filed within 10 days of the filing of the response brief. Should you still seek leave to file a reply brief, please note Plaintiff's objection, the reason for the objection and Local Rule CV 18.

Thank you, Tim Gilpin

On Mar 20, 2014, at 3:29 PM, Salton, Sierra G. wrote:

Good afternoon,

We are going to file a motion for leave to file a reply brief regarding our motion to dismiss Count II of the Petition and Plaintiff's Prayer for Attorney Fees. Do you have any objection?

Please let me know.

Best,

Sierra Salton

#### <image001.png> Sierra G. Salton | attorney

CONFIDENTIALITY NOTICE: This e-mail and any attachments are intended only for the use of those to whom it is addressed and may contain information that is confidential and prohibited from further disclosure under law. If you have received this e-mail in error, its review, use, retention and/or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message and any attachments.

TAX NOTICE: This communication may contain federal tax advice. IRS regulations require us to advise you that unless expressly stated otherwise, nothing in this communication was intended or written to be used and cannot be used or relied upon by any taxpayer to avoid any penalty under federal tax law or to promote, market or recommend any transaction or matter addressed herein. Only formal, written tax opinions meeting IRS requirements may be relied upon for the purpose of avoiding tax-related penalties. Please contact one of the firm's tax attorneys if you have any questions regarding federal tax advice

# IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	) }
Plaintiff,	, )
vs.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	DISTRICT COURT
Defendant.	) ) ) ) MAR 2 5 2014
	SE IN OPPOSITION SALLY HOWE SMITH, COURT CLER STATE OF OKLA. TULSA COUNTY

# TO DEFENDANT'S MOTION TO FILE REPLY BRIEF

COMES NOW the Plaintiff, Sonya D. Lange ("Lange"), and responds in **Opposition** to Defendant's, John Zink Co., LLC, ("Zink"), Motion to File Reply Brief. In opposition, Lange states the following:

- Local Rule CV 18. Zink requests leave to file reply brief more than ten (10) days
  from filing of Lange's Response Brief to the original Motion to Dismiss. The
  Response Brief was filed on March 6, 2014. Lange's counsel received Zink's
  Brief seeking leave on March 25, 2014;
- 2. Zink argues for leave to file reply on the issue of a prayer that included attorney fees. Lange's Response Brief argued that Zink had not responded to discovery on the issue of contract between the parties. Thus, the Motion should fail or be held in abeyance. Zink currently argues it has responded to discovery. In fact, Zink had not cooperated in discovery, only recently produced a few, limited,

answers to Interrogatories and no documents. (see counsel's letter requesting CV 21 conference, dated 3/22/14, Exhibit "A");

3. Zink should not be allowed to file a reply brief and its Motion to Dismiss should be Denied or held in abeyance until discovery had been adequately and completely responded to, at least, on the subject issues;

4. Zink is attempting to move forward on Motion to Dismiss without cooperating or adequately responding in discovery, thus placing Lange at a disadvantage in her ability to respond to the Motion;

 Lange is attempting to resolve the discovery matter, but reasonably believes it likely that a Motion to Compel discovery responses will be necessary in the near future.

WHEREFORE, the Plaintiff, Sonya D. Lange, prays that Defendant's, John Zink Co., LLC, Motion to File Reply Brief be DENIED.

Respectfully Submitted,

Tim Gilpin, OBA #11844

GILPIN LAW OFFICE 1874 South Boulder

TULSA, OK 74119

(918) 583-8900 telephone

(918) 796-5724 fax

timgilpin@gilpinlaw.net

Attorney for Sonya D. Lange

# **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this 25th day of March

, 2014

Tim Gilpin

EXHIBIT "A"

EMAIL: timgilpin@gilpinlaw.net

THE RIVERPARK BUILDING • 1874 SOUTH BOULDER • TULSA, OK 74119 • 918-583-8900 • FAX 918-796-5724 • www.gilpinlawtulsa.com

March 22, 2014

Kristen L. Brightmire Sierra G. Salton Doerner, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

Via Email & U.S. Mail

RE: Sonya D. Lange v. John Zink Co., LLC, Tulsa Co. # CJ-2014-357

- Discovery Dispute CV 21

Dear Ms. Brightmire & Slaton:

Regarding the above case, I am in receipt of Defendant's responses to Plaintiff's Requests for Admission, Interrogatories and Document Requests. However, several questions arose when reviewing Defendant's responses, objections and refusal to provide any documents. Are you claiming that any and all responsive documents are privileged and/or confidential in nature and that's why no documents were provided with the response? In any event, it would have been appropriate to either have agreed to the proposed Protective Order Plaintiff provided with the Discovery Requests, suggested changes to that order or commented on a proposal of your own. Instead, Defendant made no comment on the proposed Protective Order and provided no documents. It appears from the lack of responses that Defendant is purposefully refusing to cooperate in this discovery and acting to stall progress in our case. As such, Plaintiff is requesting a Local Rule CV 21 conference during the week of March 24<sup>th</sup> to review the discovery disputes listed below and attempt an informal resolution. Please look at your calendar and the issues below and contact me with several dates for the conference. Since this is my request, I am offering my office for our meeting.

## Requests For Admission

Request for Admission No. 3: Regarded Defendant accommodating, or not, Plaintiff's medical restrictions at work. Defendant objected, then seems to have "denied" the request. However, the follow up Interrogatory No. 3 was not answered relevant to the reason(s) for a denial. This was an evasive and/or incomplete non-answer. 12 O.S. §3237((A)(3);

Request for Admission No. 6: Regarded what Defendant, or its insurer, paid Plaintiff in Short Term Disability money benefits for a specified time period. Documents were provided that constituted admissions in the state Workers' Compensation Court. Yet, Defendant objected on relevancy grounds and did not admit or deny the Request. Defendant also did not answer the follow up Interrogatory No. 6, in the event of a denial. As such, I cannot conclude if Defendant admitted or denied the request. This was an evasive and/or incomplete non-answer. 12 O.S. §3237((A)(3);



K. Brightmire Lange v. Zink, 3/22/14 Discovery Dispute/CV 21 1st attempt

Request for Admission No. 7: Regarded Defendant not paying Plaintiff temporary total disability because she was receiving Short Term Disability payments. Defendant objected on relevancy grounds and did not admit or deny the Request. Defendant also did not answer the follow up Interrogatory No. 6, in the event of a denial. As such, I cannot conclude if Defendant admitted or denied the request. This was an evasive and/or incomplete non-answer. 12 O.S. §3237((A)(3);

If we unable to reach a timely resolution on the disputed Requests for Admission, Plaintiff will file a Motion to Compel with the Court and request that the answers to No. 3, 4, and 7 be deemed insufficient or admitted. 12 O.S. §3236(A).

### Interrogatories

Interrogatory No. 11: Sought the identity of the person/employee who replaced Plaintiff at her job following her termination. Plaintiff is seeking an important witness's identity. Defendant refused to provide any answer;

Interrogatory No. 12: Sought the identity of employees at Oklahoma locations who were terminated from October, 2010, to the present. Defendant refused to provide any answer. Plaintiff is seeking witnesses who worked for the same employer in the same work place who were also fired by John Zink. This is a wrongful termination case and the Interrogatory was limited to a reasonable period of time and geographic location;

Interrogatory No. 13: Sought John Zink's version of what work restrictions Plaintiff had that necessitated her termination. Defendant alleges that Plaintiff was fired

"[A]fter consulting with her and learning that she was not scheduled to be released to work in the near future, her employment was terminated."

Response to Interrogatory No. 8

What restrictions forbid Plaintiff from being released to work? In this wrongful termination case Plaintiff suffered work related injuries and had work restrictions. Which of these restrictions made it impossible for Plaintiff to return to work is an important and relevant piece of information that will likely be evidence at our jury trial;

Interrogatory No. 14: Sought what Defendant did to accommodate Plaintiff's work restrictions that disabled her from performing her work. "Accommodate" is specifically defined as "enable Sonya D. Lange to perform her essential job functions". Defendant refused to provide any answer. This is a case of retaliatory discharge where admittedly a work injury occurred and physician restrictions were in

K. Brightmire Lange v. Zink, 3/22/14 Discovery Dispute/CV 21 1<sup>st</sup> attempt

place. Firing Plaintiff due to her pursuit of a workers' compensation claim and/or while she was temporary totally disabled because of work absence is a discriminatory act. What Defendant did or did not do to accommodate the physician restrictions so Plaintiff could return to work sooner is relevant and likely will be evidence at our jury trial;

Interrogatory No. 15: Sought the identity of witnesses. Defendant listed a few names, without any identifying information (definition supplied). Defendant did not list whether or not the witnesses were current employees or, if current employees, what position they held and if that position was managerial in nature. The answer was evasive and, thus a non-answer. 12 O.S. §3237((A)(3);

If we are unable to reach a timely resolution on the disputed Interrogatories, Plaintiff will file a Motion to Compel seeking complete and full responses.

## **Document Production Requests**

Request No. 1: Sought Plaintiff's employment file and documents related to her job performance, functions, injuries, restrictions and disability. Defendant objected, but stated it would respond. Yet no documents were provided. This was an evasive non-response that stalled progress in our case;

Request No. 2: Sought documents related to other allegations of wrongful discharge against the Defendant. Defendant objected, attempted to limit the Request to workers' compensation and refused to provide any documents. Plaintiff is not limited to retaliatory discharge under Workers Compensation. Further, Plaintiff is unwilling to allow Defendant to unilaterally decide what among its charges of wrongful discharge might be relevant to our case.

Request No. 3: Sought documents on other employees who have filed a workers' compensation claim and, specifically, Form 2s. Defendant objected, then agreed to provide the responsive documents. However, no documents were provided. Defendant insisted on a Protective order, yet did not propose one and did not comment on the proposed Protective Order that was provided by Plaintiff. This was an evasive non-answer, 12 O.S. §3237((A)(3), that's purpose appears to delay progress in our case;

Request No. 4: Sought relevant employee manuals or handbooks. Defendant objected, but stated it would respond. Yet no documents were provided. This was an evasive non-response, 12 O.S. §3237((A)(3), that stalled progress in our case;

K. Brightmire Lange v. Zink, 3/22/14 Discovery Dispute/CV 21 1<sup>st</sup> attempt

- Request No. 6: Sought statements taken in the case. The Request specifically excluded attorney/client communications. Defendant objected, but stated it would respond. Yet no documents were provided. This was an evasive non-response, 12 O.S. §3237((A)(3), that stalled progress in our case;
- Request No. 7: Sought the personnel file of the person who replaced Plaintiff at the work place. Defendant objected and refused to respond. Information on the employee who assumed Plaintiff's work duties in this discrimination case is both relevant and likely will be evidence in our jury trial. Further, Defendant did not even comment on the Protective Order that Plaintiff provided or propose one of its own;
- Request No. 8: Sought documents memorializing or relating to the qualifications for Plaintiff's job at Defendant. Defendant refused to respond. This information is most relevant to the facts and defenses in our wrongful termination discrimination case. The refusal to respond indicates Defendant is simply stalling progress in our case;
- Request No. 9: Sought Defendant's profit and loss statements for 2010 to present. Defendant refused to respond. If we cannot agree to a response under the proposed Protective Order, Plaintiff will seek the Court's assistance through a Motion to Compel production;
- Request No. 10: Sought documents related to Plaintiff's termination. Defendant stated it would respond. Yet no documents were provided. This was an evasive non-response, 12 O.S. §3237((A)(3), that stalled progress in our case;
- Request No. 11: Sought documents related to Defendant's efforts to enable Plaintiff to perform her job. Defendant objected and refused to respond. These documents are clearly relevant to the allegations of retaliatory discharge and discrimination. The refusal to respond indicates Defendant is simply stalling progress in our case;
- Request No. 12: Sought non privileged communications between Defendant and its workers' compensation insurer on Plaintiff. The Request specifically excluded attorney/client communications. Defendant stated it would respond. Yet no documents were provided. This was an evasive non-response, 12 O.S. §3237((A)(3), that stalled progress in our case;
- Request No. 13: Sought documents related to payment of Plaintiff's Short Term Disability and/or temporary total disability. Defendant objected and refused to respond. These documents are clearly relevant to the allegations of retaliatory

K. Brightmire Lange v. Zink, 3/22/14 Discovery Dispute/CV 21 1<sup>st</sup> attempt

discharge, discrimination and period of temporary total disability. The refusal to respond indicates Defendant is simply stalling progress in our case;

In light of all the above, I am requesting that we meet next week for a CV 21 conference. Please contact me with several convenient dates and times. Absent hearing back from you, I will assume the obligations under CV 21 have been complied with and proceed with a Motion to Compel seeking the Court's assistance. Thank you.

Very Sincerely,

Timothy S. Gilpin

TSG/cp

# IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

D	ST	RICT	COL	JRT
-	3		E	D

SONYA D. LANGE,	)		MAR 2 6 2014
SONTA D. LANGE,	• • •		DALLY HOUSE
Plaintiff,	)		SALLY HOWE SMITH, COURT CLERI STATE OF OKLA. TULSA COUNTY
•	)		
VS.	) Case N	No. CJ-2014-357	
	) Judge	Daman Cantrell	
JOHN ZINK CO., LLC,	)		
	j )		
Defendant.	· j		

#### ORDER GRANTING DEFENDANT LEAVE TO FILE REPLY BRIEF

Upon consideration of Defendant's Motion for Leave to File Reply Brief, the Court finds that such motion should be granted. It is hereby ordered that Defendant may file its reply brief within five days of entry of this order.

IT IS SO ORDERED.

Dated this Etday of \_\_\_\_\_\_\_, 2014

JUDGE OF THE DISTRICT COURT

Submitted by:

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212 Two West Second Street, Suite 700 Tulsa, Oklahoma 74103-3117 Telephone (918) 591-5204 Facsimile (918) 925-5204 kbrightmire@dsda.com ssalton@dsda.com

Attorneys for Defendant

3013666v1

**EXHIBIT 9** 

## IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	)
Plaintiff,	DISTRYCT COURT  D
VS.	) Case No. CJ-2014-357
JOHN ZINK CO., LLC,	) Judge Daman Cantrell MAR 3 1 2014
Defendant.	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULGA COUNTY

#### DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL DISMISSAL

Defendant John Zink Co., LLC ("John Zink") filed a motion for partial dismissal seeking to dismiss Count II (negligent hiring, supervision, and retention) and seeking to dismiss Plaintiff's prayer for attorneys' fees. While Defendant continues to urge its full motion, this reply addresses only the latter point.

### I. PLAINTIFF'S CLAIM FOR ATTORNEYS' FEES SHOULD BE DISMISSED AS SHE HAS FAILED TO STATE ANY CLAIM FOR WHICH FEES ARE RECOVERABLE

Plaintiff's Petition alleges three Counts: retaliator discharge in violation of OKLA. STAT. tit. 85, § 341; the tort of negligent hiring, supervision, and retention; and the tort of intentional infliction of emotional distress. In its motion, John Zink set forth its arguments including a citation to Webb v. Dayton Tire and Rubber Co., 1985 OK 7, ¶ 5, 697 P.2d 519, 522 ("It is well settled in Oklahoma, with narrow exception, that attorney fees are not recoverable by a prevailing party in absence of statute or enforceable contract expressly authorizing same." (emphasis added)). See also Def's Mot. at pp. 3-4.

Conceding that she had not pled any such theory of recovery, in her response, Plaintiff's entire argument is as follows:

Lange is attempting to ascertain whether or not a contract existed between the parties for employment through her discovery requests. If a contract existed, a breach would entitle the damaged party to attorney fees. Morgan v. Galilean Health Enterprises, 1998 OK 130, 977 P.2d 357. This case was recently filed on January 28, 2014. Zink was served the Petition and Lange's First Set of Discovery Requests on January 30, 2014. Discovery on the issue of whether or not a contract for employment existed is still outstanding and not completed. Zink's motion to dismiss attorney fees as a form of relief is premature and therefore must be denied.

Pl. Resp. at 7. This is not a basis upon which to deny John Zink's motion.

Plaintiff should not be allowed to maintain her claim for fees on the hope that she can later develop a theory of recovery to support her claim of attorneys' fees. Surely, if there were an "enforceable contract expressly authorizing" the recovery of attorneys' fees between the parties, Plaintiff - necessarily a party to that contract - would know of its existence. Yet, she did not allege the existence of such a contract. She did not do so because there is no contract. Without such allegations, there is no basis upon which to deny the motion.

The case cited by Plaintiff, Morgan v. Galilean Health Enterprises, does not stand for the proposition that, if any contract existed, a breach would entitle the damaged party to attorney fees. In Morgan, the issue was whether the prevailing plaintiff could recover fees under the tort theory raised or under a statutory claim. In dicta, the court noted our state's general position:

When called upon to assess litigation expenses, we continue to stand firmly committed to the American Rule. Except where a statute or contract provides otherwise, every litigant is responsible for its own litigation expenses, including the attorney's fee. No contractual obligation for the payment of an attorney's fee in this

<sup>&</sup>lt;sup>1</sup> Plaintiff argues she is awaiting discovery to learn whether such a contract exists. Plaintiff should know whether she was party to a contract. To the extent she is currently unaware of a contract to which she may later claim she was a party, the proper course is for Plaintiff to move to amend when she has enough evidence to state such a claim. If at that time, she can state a claim for breach of a contract which provides for the recovery of attorneys' fees, she can include a prayer for them. It is improper to allow that claim to remain in this lawsuit based upon the remote hope that Plaintiff will stumble upon a contract authorizing the payment of attorneys' fees to the prevailing party – a written contract about which Plaintiff has no recall.

case was ever create between Morgan and Galilean. Hence, Morgan may secure an attorney's fee *only* if that award is authorized by statute.

Id. at ¶ 11. Morgan supports John Zink's position. Plaintiff must not only allege a contract but a "contractual obligation for the payment of attorney's fees."

Plaintiff has not pled a statute under which attorney's fees are recoverable. Attorneys' fees are not recoverable for tort claims. Plaintiff has not pled that she and John Zink were party to a contract which expressly authorizes the payment of attorneys' fees to the prevailing party.

Based upon the foregoing, Defendant respectfully requests that Plaintiff's prayer for the recovery of attorneys' fees be dismissed.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 591-5204

Facsimile (918) 925-5204

kbrightmire@dsda.com ssalton@dsda.com

Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 31, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Kristen L. Brightmire

3017979v1

	OF OKLAHOMA
SONYA D. LANGE, Plaintiff,	)
VS.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC.,	DISTRICT COURT
a Foreign Limited Liability	FILE D
Company,	
Defendant.	APR 2 3 2014

## PLAINITFF'S MOTION TO COMPEL DISCOVERY SALLY HOWE SMITH, COURT CLERK STATE OF OKLA: TULSA COUNTY

SUPPORTING BRIEF

#### I. Introduction

COMES NOW, the Plaintiff, Sonya D. Lange ("Lange"), and pursuant to Okla. Stat. Tit. §3237 moves to Compel discovery from the Defendant, John Zink Co., LLC, ("Zink"). After being employed for over three and a half (3 ½) years, Lange was fired by Zink after reporting a work injury, while receiving medical care and off work on a physician's work release. The Petition alleges that Lange was wrongfully terminated: 1) because she pursued her rights and a claim under state Workers' Compensation Act; and, 2) she was fired while temporarily totally disabled (off work under physician's orders), due solely to absence from work. 85 O.S. §341(A) & (B). See Zink termination email dated 10/9/12. (Exhibit "A"). Lange's Petition also contains counts for Intentional Infliction of Emotional Distress and Negligent Hiring and Supervision.

#### A. Pre-Motion Consultation

Lange and Zink's counsel have consulted on the discovery controversies below, to no avail. Lange seeks discovery on witnesses, documents and financial data relevant to the claims and defenses in this retaliatory discharge case.

#### II. 85 O.S. §341: Burden of Proof And Relevant Evidence

Patterns of an employer's behavior toward its employees is important, relevant and discoverable evidence in a retaliatory discharge case. At the very least, such evidence is likely to lead to admissible trial evidence. 12 O.S. §3226(B)(1)(a). Lange bears the burden of proof to establish a prima facie case. If successful, a burden of production then shifts to Zink/employer to articulate a legitimate non-retaliatory reason for the termination. If Zink meets its burden, the case proceeds to a more specific level of factual inquiry. Lange must then produce evidence that the proffered termination reason is pretext. Even if pretext is not shown, Lange may still recover by showing that the termination was "significantly motivated" by retaliation for exercising her statutory rights under the workers' compensation laws, even though other legitimate reasons for the firing exist. Wallace v. Halliburton Co., 1993 OK 24, ¶5, 850 P.2d 1056; Buckner v. GMC, 1988 OK 73, ¶¶9, 10 and 11, 760 P.2d 803; Mantha v. Liquid Carbonic Industries, Inc., 1992 OK CIV APP 28, ¶5, 839 P.2d 200.

#### A. Circumstantial Evidence & Patterns of Behavior

"Because employers seldom admit to any wrongdoing, the link between the employee's filing of a workers' compensation claim and his subsequent termination must usually be shown by circumstantial evidence". Mantha v. Liquid Carbonic Industries, Inc., at ¶7. This evidence may take the form of patterns of behavior by the employer such as:

- a. encouraging employees suffering work-related injuries to file health insurance claims instead of workers' compensation claims;
- b. supervisors getting mad when employees showed interest in filing a workers' compensation claim;
- c. employees worried about being fired if they filed workers' compensation
- d. employees let go after filing a workers' compensation claim, over less

qualified employees who had not filed a claim.

<u>Wallace v. Halliburton Co.</u>, at ¶¶14, 15 & 16.

Oklahoma Courts have also found an employee's retaliatory discharge case lacking because "a pattern of termination of workers who filed claims, or of pressure put on workers not to file claims" was not shown by the evidence. <u>Taylor v. Cache Nursing Centers</u>, 1994 OK CIV APP 160, ¶15, 891 P.2d 607.

Patterns of an employer's behavior toward its employees is important, relevant and discoverable evidence in a retaliatory discharge case.

#### **B.** Liberal Discovery of Information

The Oklahoma Discovery Code was written and is interpreted to allow liberal discovery of information and documents that go to the allegations in a case and defenses thereto or could lead to evidence admissible at trial, 12 O.S. §3226(B)(1)(a):

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (emphasis added)

### III. Discovery Sought Compelled

A. Interrogatories (Amended Answers to Interrogatories, Exhibit "B")

Interrogatory No. 11: Lange sought the identity of the employee(s) who replaced her. John Zink refuses to identify this employee(s). Plaintiff previously offered,

several times, to enter into an Agreed Protective Order. Identifying the replacement employee goes to the defense that Lange's position was eliminated. On the other hand, if a replacement employee exists, that employee's qualifications compared to Lange, lack of a work injury record, absentee history, physical limitations, restrictions or disabilities (or lack thereof) are relevant by comparison to prove that Lange was fired due to suffering a work injury with resulting restrictions and/or filing a workers' compensation claim. Wallace v. Halliburton Co., at ¶¶14, 15 & 16 and Taylor v. Cache Nursing Centers, ¶15.

Interrogatory No. 12: Sought indentifying information on other employees who were terminated. Lange narrowed the request to Oklahoma locations and for a three (3) year period. Zink refuses to identity employees who were terminated. In this wrongful discharge case, Plaintiff is seeking witnesses who worked in the same general work environment, for the same employer and who experienced being fired during the same time period Lange worked for and was fired by Zink. Lange seeks evidence of a pattern of terminations or pressure put on employees. Taylor v. Cache Nursing Centers, ¶15.

This discovery should not be limited controlled by Zink by limiting its scope to claims Zink identifies with work injuries. Zink may argue that it be allowed to limit its response to only those fired employees who claimed a problem with their work injury claim. However, an employer and former employee often disagree over the reason(s) for a termination. If Zink where allowed to unilaterally limit its scope of response to those it identified as work injury terminated workers, the Defendant would be in a position to characterize its former employees' issue(s) without benefit of any check upon the accuracy and without Lange being able to discover the former employees belief(s) on why they were fired. Enabling Zink

to control the scope of this discovery would allow it to act in its best interests without any check on veracity and the totality of the response.

The compelled discovery, in large part, seeks the identity of, and/or will lead to, persons with knowledge of the events in our case (witnesses) and/or individuals who experienced similar circumstances in the same work place during the same general time period. Lange offered to enter into an Agreed Protective Order to safe guard private information and Zink's position regarding potentially sensitive information.

"The identity and location of persons having knowledge of matters pertaining to an action are not privileged, except in the possible instance of informers." <u>FDIC v. St. Paul Fire & Marine Insur. Co.</u>, 53 F.R.D. 260 (W.D. Okla. 1971)

## B. Document Production Request

(Amended Answers to Document Requests, Exhibit "C")

Request No. 1: Sought Lange's employment file and related documents. Zink produced (dumped) approximately 900 documents and refused to categorize these documents by discovery Request such that Lange can accurately identify her employment file and documents related to her job performance, functions, injuries, restrictions and disability. Lange cannot proceed in the case without a clear understanding of what documents Zink relied upon in making its employment decisions related to Lange. 12 O.S. §3234(B)(5), provides in part:

"Unless the parties otherwise agree, or the court otherwise orders:

a. a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request,"

Lange requests the Court Order Zink to organize and label the approximate 900

pages of documents to correspond to the categories of the Requests. This will serve the purpose of an orderly, economical and efficient discovery process and allow Lange to accurately understand what supports or does not support Zink's defenses in the case.

Request No. 2: Sought documents relating to allegations of wrongful discharge lodged against Zink. Lange narrowed the requested information to lawsuits, Equal Employment Opportunity Commission claims and attorney demands regarding allegations of wrongful termination in Oklahoma and for a period of three (3) years. Lange is attempting to discovery a pattern of behavior by Zink toward its employees by discovering the identity and location of potential witnesses from the same environment, during the same general time period as Lange's tenure at Zink and who were terminated and alleged it was wrongful. Lange is properly attempting to discover a pattern of behavior by Zink towards its employees. Wallace v. Halliburton Co., at ¶¶14, 15 & 16 and Taylor v. Cache Nursing Centers, at ¶15.

Request No. 3: Sought documents that memorialize employee claims of work-related injury at Zink for the last 3 years. Specifically, Lange requested copies of state Workers' Compensation Form 2s. Workers' Compensation Form 2s are required by the state to be filed and kept by an employer when a worker is injured on-the-job and looses time from work or requires medical attention. (see Form 2, Exhibit "D").

Form 2s contain all the information sought (including the witness' injury, address and contact information). Form 2s are required by state law to be created and readily available. However, they are not public information and thus their production must be accomplished

within a Court discovery process. Lange offered to enter an Agreed Protective Order to safe guard private information of third persons.

Form 2s are relevant to Lange's discovery of witnesses and/or other employees who experienced similar facts and circumstances as her (work-related injury), in the same work place, during the same period of time <u>and</u> contain the witness' contact information and whereabouts. Lange is properly attempting to discover a pattern of behavior by Zink towards its employees. <u>Wallace v. Halliburton Co.</u>, at ¶¶14, 15 & 16 and <u>Taylor v. Cache Nursing Centers</u>, at ¶15.

Request No. 7: Sought the personnel file of the employee(s) who replaced Lange. John Zink refuses to provide it. Plaintiff previously offered, several times, to enter into an Agreed Protective Order. Information on the replacement employee goes to the potential defense that Lange's position was eliminated. On the other hand, if a replacement employee exists, that employee's qualifications compared to Lange, lack of a work injury record, absentee history, physical limitations, restrictions or disabilities (or lack thereof) are relevant by comparison to prove that Lange was fired due to a work injury with resulting restrictions and/or filing a workers' compensation claim.

Request No. 8: Sought a Job Description for Plaintiff's position. Zink stated that this document(s) would be provided, but none was tendered. Zink Doc. No. JZ000879 – JZ000880 states a document describing Plaintiff's job responsibilities exists, but Zink has thus far, failed, refused or neglected to produce it.

Request No. 9: John Zink refuses to provide its profit and loss statements for 2010 to present <u>or</u> Income Tax Returns. Plaintiff has previously offered, several times, to enter into an Agreed Protective Order to safe guard private information of third persons.

These documents are relevant, and are likely to lead to admissible evidence, on any defense of financial necessity for the termination, lack of ability to fill Lange's position and the issue of punitive damages.

Regarding a defendant's financial information and records, in YMCA of OKC v. Melson, 1997 OK 81, 944 P.2d 302, 305, the Oklahoma Supreme Court dealt with an issue of whether: "(1) a tort defendant may be compelled to produce financial records *in advance* of the judge's in-trial decision that would submit to the jury the plaintiff's plea for punitive damages ...". In this 1997 decision, the Oklahoma high Court expressly rejected a "wait and see" discovery position and held that "the documents in contest may indeed be the subject of pretrial discovery, ..." subject to the court's consideration of an appropriate protective order.

Request No. 10: Sought documents related to Lange's termination. John Zink refuses to identify what documents are related to Plaintiff's termination, among the almost 900 pages previously produced. 12 O.S. §3234(B)(5), provides in part:

"Unless the parties otherwise agree, or the court otherwise orders:

a. a party who produces documents for inspection shall produce them as they are kept in the usual course of business <u>or shall organize and label them to correspond with the categories in the request,</u>"

Lange requests the Court Order Zink to organize and label the approximate 900 pages of documents produced to correspond to the categories of the Requests. This will

serve the purpose of an orderly, economical and efficient discovery process and allow Lange to accurately understand what supports or does not support Zink's defenses in the case.

#### **IV. Conclusion**

WHEREFORE, premises considered, the Plaintiff, Sonya D. Lange, prays that Defendant, John Zink Co., LLC, be Compelled, pursuant to 12 O.S. §3237, to produce on a date certain complete and full responses to the above discovery. Further, that Plaintiff be awarded her attorney fees, costs and any other relief this Court deems just and equitable related to the brining of this Motion.

Respectfully Submitted,

Tim Gilpin, OBA #11844

GILPIN LAW OFFICE

1874 South Boulder

TULSA, OK 74119

(918) 583-8900 telephone

(918) 796-5724 fax

timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

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2014.

Tim Gilpir

EXHIBIT "A"

#### Hopkins, Shawnna

From:

Smith, Patty

Sent:

Tuesday, October 09, 2012 12:21 PM

To:

Sonya Carr (sonyadawn@att.net)

Subject:

**Termination Information** 

Dear Sonya,

You are currently off-site because of a medical restriction that prevents you from performing your job now or in the near future. In addition, you have exhausted all applicable leave under the Family and Medical Leave Act. As a result, we have made the business decision to terminate your employment.

We wish you the best for the future and remind you that you are welcome to apply for open positions we have once you are ready, willing and able to return to work.

Sincerely, Patty Smith

Patty R. Smith, PHR
Human Resources Leader
John Zink Company, LLC
11920 East Apache
Tulsa, OK 74121-1220
918-234-2938 (Office)
918-630-2339 (Mobile)
patty.smith@johnzink.com



EXHIBIT "B"

## IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	)
Plaintiff,	)
vs.	Case No. CJ-2014-357 Judge Daman Cantrell
JOHN ZINK CO., LLC, a Foreign Limited Liability Company,	)
Defendant.	)

## DEFENDANT'S AMENDED ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES

Defendant John Zink Company, LLC ("John Zink") responds to Plaintiff's First Interrogatories as follows:

#### **GENERAL OBJECTIONS**

- 1. John Zink objects to Plaintiff's "Requests for Admission, Interrogatories and Document Requests" to the extent it seeks to impose duties or obligations upon John Zink which are beyond the scope and authority of the Oklahoma Discovery Code. John Zink will provide responses in accordance with the requirements of the Oklahoma Discovery Code and within the time required thereby, specifically Okla. Stat. tit. 12 § 3236, § 3233 and §3234.
- 2. John Zink intends to assert all applicable privileges, exemptions, and protections afforded by law. To the extent John Zink produces, provides, or discloses privileged, exempt, or protected information or documents, such production or disclosure shall not be construed as a waiver by John Zink or its attorneys of such privilege, exemption, or protection, and John Zink reserves the right to claim and continue asserting all available privileges, exemptions, and protections, relative to both the unintentionally disclosed or produced information or document, as well as any other such privileged, exempt, or protected information or document as has not yet been disclosed or produced.
- 3. John Zink objects to producing any document or providing any information that contains or consists of confidential or proprietary information without entry of a protective order acceptable to John Zink.
- 4. John Zink does not concede the relevance of any document or information provided, identified or produced in response to Plaintiff's "Requests for Admission, Interrogatories and Document Requests," nor the relevance or admissibility of any such document or information provided or produced in response thereto. The fact that information is



provided or a document produced in response to one of Plaintiff's discovery requests does not mean that it is probative of any particular issue in this case.

- 5. John Zink reserves the right to amend and/or supplement its responses, pursuant to applicable law, and to present additional witnesses, evidence and documents, as discovery of such additional information or documents dictates to be necessary or desirable.
- 6. Each general objection is specifically incorporated by reference in each response and answer set forth herein.
- 7. The information contained in John Zink's responses is not necessarily based solely on the knowledge of the verifying person, but may also include the knowledge of other agents, representatives, and attorneys of John Zink, unless privileged, and documents within the possession of John Zink. The word usage and sentence structure in the answers may be that of John Zink's attorneys, and, therefore, does not purport to be the precise language of any witness who may testify in this matter.

#### SPECIFIC OBJECTIONS

- 1. John Zink objects to "Definitions and Instructions For Interrogatories" A to the extent they seek information subject to the attorney-client privilege and/or work product doctrine.
- 2. John Zink objects to "Definition and Instructions For Interrogatories" C to the extent it imposes duties or obligations upon John Zink which are beyond the scope and authority of the Oklahoma Discovery Code.
- 3. John Zink objects to "Definitions and Instruction For Interrogatories" D, E and F to the extent they impose an undue burden or expense upon John Zink.

#### INTERROGATORIES

INTERROGATORY NO. 1: If you deny the above Interrogatory (sic, Request for Admission No. 1), in whole or part, please state the reason(s) supporting that denial.

### ANSWER TO INTERROGATORY NO. 1: Not applicable.

INTERROGATORY NO. 2: If you deny the above Interrogatory (sic, Request for Admission No. 2), in whole or part, please state the reason(s) supporting that denial.

## ANSWER TO INTERROGATORY NO. 2: Not applicable.

INTERROGATORY NO. 3: If you deny the above Interrogatory (sic, Request for Admission No.3), in whole or part, please state the reason(s) supporting that denial.

ANSWER TO INTERROGATORY NO. 3: Not applicable. Defendant objected to Request for Admission No. 3.

<u>INTERROGATORY NO. 4:</u> If you deny the above Interrogatory (sic, Request for Admission No.4), in whole or part, please state the reason(s) supporting that denial.

**ANSWER TO INTERROGATORY NO. 4:** Not applicable.

<u>INTERROGATORY NO. 5:</u> If you deny the above Interrogatory (sic, Request for Admission No.5), in whole or part, please state the reason(s) supporting that denial.

ANSWER TO INTERROGATORY NO. 5: Lange was terminated following her exhaustion of all applicable leave and her inability to return to work.

<u>INTERROGATORY NO. 6:</u> If you deny the above Interrogatory (sic, Request for Admission No.6), in whole or part, please state the reason(s) supporting that denial.

ANSWER TO INTERROGATORY NO. 6: Not applicable. Defendant objected to Request for Admission No. 6.

INTERROGATORY NO. 7: If you deny the above Interrogatory (sic, Request for Admission No.7), in whole or part, please state the reason(s) supporting that denial.

ANSWER TO INTERROGATORY NO. 7: Not applicable. Defendant objected to Request for Admission No. 7.

INTERROGATORY NO. 8: Set forth each reason for the termination of Sonya D. Lange's employment with Zink (or separation from employment between Plaintiff and you). To be complete, include each business decision, underlying act, omission, instance of misconduct, complaint by any persons, inadequate performance or other matter apart of the termination decision. Your statement must describe the substance of acts or events raised and give the date or each business decision, occurrence or omission.

ANSWER TO INTERROGATORY NO. 8: Plaintiff exhausted all of her applicable leave and was still unable to return to work. After consulting with her and learning that she was not scheduled to be released to work in the near future, her employment was terminated.

**INTERROGATORY NO. 9:** Identify (see Definitions, above) all persons who had any part in the termination of Sonya D. Lange from Zink's employment.

ANSWER TO INTERROGATORY NO. 9: The following were involved in the decision to terminate plaintiff's employment: Debbie Cowan (HR Director), Patty Smith (HR Leader), Casey Chambers (CFO) and Karen Sumner (Accounting Supervisor).

<u>INTERROGATORY NO. 10:</u> For each person identified in your answer to Interrogatory, above, specify any training received related to Workers Compensation claims and any related rights under state or federal law.

ANSWER TO INTERROGATORY NO. 10: Defendant objects to this request as it is not relevant. Plaintiff was not terminated due to her filing of Workers Compensation claims. Every person identified in the response to Interrogatory No. 9 received supervisory training, including workers' compensation training. The individuals identified above received the following relevant training:

Patty Smith: Employment & Labor Supervisory Skills.

<u>Casey Chambers</u>: Employment & Labor Supervisory Skills; Employment Law & Other Key Areas of Compliance Supervisors Need to Know; Supervisory Training.

Karen Sumner: Employment & Labor Supervisory Skills; Supervisory Skills.

<u>Debbie Cowan</u>: Employment Law & Labor Supervisory Skills; Supervisory Skills: Employment Law Basics; Supervisory Skills: Employment Law; Employment Law & Other Key Areas of Compliance Supervisors Need to Know.

INTERROGATORY NO. 11: Identify (see Definition "C", above) all persons who were hired, or assigned by you, since October, 2012, to the employment duties which were performed by Sonya D. Lange prior to her termination at the location she worked at.

ANSWER TO INTERROGATORY NO. 11: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

<u>INTERROGATORY NO. 12:</u> Identify (see Definition "C", above) fully and completely your employees, Oklahoma locations, from October 2010, to present, who have been terminated.

ANSWER TO INTERROGATORY NO. 12: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

INTERROGATORY NO. 13: Please state and identify (see Definitions, above) any and all work restrictions Sonya D. Lange possessed or suffered from at the time of her employment termination that caused, necessitated or justified her employment termination.

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ANSWER TO INTERROGATORY NO. 13: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action. Subject to that objection, Lange was terminated following her exhaustion of all applicable leave and her inability to return to work as Plaintiff's physician advised she was unable to perform any of her job functions and would remain unable to do so for at least one month as of the time of her termination.

<u>INTERROGATORY NO. 14:</u> Identify (see Definitions, above) and state any and all efforts or processes you undertook to accommodate (enable Sonya D. Lange to perform her essential job functions) what you believed to be Sonya D. Lange's work restrictions that disabled her from performing her essential Zink job functions.

ANSWER TO INTERROGATORY NO. 14: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action. Plaintiff has not alleged a claim regarding a failure to accommodate. Instead, she has alleged a claim for retaliatory discharge, negligent retention/hiring/supervision, and intentional infliction of emotional distress.

INTERROGATORY NO. 15: Identify (see Definitions, above) each person who, to your belief, (including the investigation or inquiries conducted by defense counsel or any other person) has knowledge related to any material issues in this case. By "material", this interrogatory refers to Plaintiff's employment with you, ability to perform Plaintiff's essential Zink job functions, allegation of work injury(ies), recovery, work place accommodations, interactive process to determine any necessary accommodations and termination.

ANSWER TO INTERROGATORY NO. 15: Defendant objects to Interrogatory No. 15 on the basis of attorney-client privilege and work product as well as to the extent it imposes an undue burden and expense upon Defendant by requiring it to disclose all facts and circumstances that it and its counsel believes are relevant to the material issues in this case. Further, to the extent this interrogatory asks for individuals with knowledge of Plaintiff's essential job functions, work place accommodations, and interactive process to determine necessary accommodations, Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

Subject thereto, Defendant identifies each of the following as currently known to have knowledge regarding facts and circumstances related to (i) Plaintiff's employment with the Defendant during the year prior to her termination, (ii) Plaintiff's allegation of work injuries, (iii) Plaintiff's absences, leaves and communications regarding Plaintiff's inability to return to work, and (iv) Plaintiff's termination: Debbie Cowan, (Vice President Human Resources, Koch Chemical Technology Group, LLC), Patty Smith, (Human Resources Leader), Casey Chambers, (Chief Financial Officer), Karen Sumner, (Credit Manager, Supervisor of Revenue & Financial Reporting), Paula Huddleston, (Safety Specialist). All of the foregoing witnesses are currently employed by John Zink or an affiliated company and may be contacted care of the undersigned counsel. Of course, Plaintiff also has knowledge of these topics.

Respectfully submitted,

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DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212
Two West Second Street Suite 700

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 591-5204

Facsimile (918) 925-5204

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

## **VERIFICATION**

STATE OF OKLAHOMA ) COUNTY OF TULSA )	SS.			
,	and foregoing discovering set forth in the list	ery response		th the
	Shanno	on Hammons		· · · · · · · · · · · · · · · · · · ·
Subscribed and sworn	to before me this	day	of April, 2014.	
	·		·	
	Notary	Public		
Art of Committee to 1981 to 1			-4 3 <b>9</b> 0%	
My Commission Number:			*4. *W / N.	
My Commission Expires:				

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 9, 2014, a true and correct copy of the above and foregoing instrument was mailed with proper postage to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Kristen L. Brightmire

3029097v1

EXHIBIT "C"

## IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-2014-357 Judge Daman Cantrell
JOHN ZINK CO., LLC, a Foreign Limited	)	
Liability Company,	)	
Defendant.	)	

## DEFENDANT'S AMENDED RESPONSE TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendant John Zink responds to Plaintiff's First Requests for Production of Documents as follows:

#### **GENERAL OBJECTIONS**

- 1. John Zink objects to Plaintiff's "Requests for Admission, Interrogatories and Document Requests" to the extent it seeks to impose duties or obligations upon John Zink which are beyond the scope and authority of the Oklahoma Discovery Code. John Zink will provide responses in accordance with the requirements of the Oklahoma Discovery Code and within the time required thereby, specifically Okla. Stat. tit. 12 §3236, §3233 and §3234.
- 2. Defendant will not produce any document which is protected by the attorney-client privilege or protected as work product. Any responsive document withheld on the basis of privilege or as work product will be described in a log in accordance with OKLA. STAT. tit. 12, § 2012(B)(5). John Zink asserts a blanket privilege covering all pleadings, draft pleadings, memorandum prepared by counsel, research materials, notes from interviews, notes from telephone conferences, notes from meetings and similar information. John Zink does not contend that documents or information that are not otherwise privileged are made privileged by being contained in a legal file. However, John Zink will only produce those non-privileged documents from legal files that exist in no other place than such files of counsel.
- 3. John Zink intends to assert all applicable privileges, exemptions, and protections afforded by law. To the extent John Zink produces, provides, or discloses privileged, exempt, or protected information or documents, such production or disclosure shall not be construed as a waiver by John Zink or its attorneys of such privilege, exemption, or protection, and John Zink reserves the right to claim and continue asserting all available privileges, exemptions, and protections, relative to both the unintentionally disclosed or produced information or document, as well as any other such privileged, exempt, or protected information or document as has not yet been disclosed or produced.

her personnel file" insofar as it is overly broad and could be outside the control of the management of Defendant. Subject to those objections, Defendant will produce responsive documents.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all writings or documents (see Definitions, above) in your possession that relate or refer to allegations of wrongful discharge lodged against Zink, Oklahoma locations, from October, 2010, to the present. This request does not seek attorney/client communications. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

RESPONSE TO PRODUCTION NO. 2: Defendant objects to this request in that it is overly broad and not relevant to the subject matter involved in the pending action insofar as the request seeks any information other than lawsuits alleging discharge in retaliation for exercising rights under Oklahoma's Workers' Compensation Act. Subject to that objection, Defendant is not aware of any other lawsuits alleging discharge in retaliation for exercising rights under Oklahoma's Workers' Compensation Act.

REQUEST FOR PRODUCTION NO. 3: Please produce the document(s), writing or things (see Definitions, above) that memorialize YOUR employees who have filed a claim for work injury in Oklahoma since October, 2010, including Workers' Compensation Form 2s. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

**RESPONSE TO PRODUCTION NO. 3:** Defendant objects to Request No. 3 to the extent it concerns employees other than the Plaintiff and seeks information not related to the subject matter of the pending litigation.

**REQUEST FOR PRODUCTION NO. 4:** Please produce any and all employee manuals or hand books regarding employment at Zink covering the period of September, 2012, to present.

RESPONSE TO PRODUCTION NO. 4: Defendant objects to Request No. 4 to the extent it seeks information not relevant to the subject matter involved in the pending action. Subject to this objection, John Zink will produce the Employee Handbook covering the period when Plaintiff was discharged.

**REQUEST FOR PRODUCTION NO. 5:** Please produce all exhibits you intend to present at the trial of the above case, along with expert reports.

**RESPONSE TO PRODUCTION NO. 5:** Defendant has not identified any exhibits it intends to present at trial or any expert reports at this time.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents or writing (see Definitions, above) which contain statements by any person regarding the facts alleged by the Plaintiff, the defenses asserted by you, or any other statement given in conjunction with this case, whether in affidavit form, written statement or recorded format. This request does not seek attorney/client communications.

**RESPONSE TO PRODUCTION NO. 6:** Defendant objects to Request No. 6 to the extent it seeks information subject to the attorney-client privilege or the work product doctrine. Subject to this objection, should any such responsive, non-privileged document or writing exist and be in the possession of Defendant, it will be produced.

REQUEST FOR PRODUCTION NO. 7: Please produce the employment file, personnel file, including: full name, title, job description, job qualifications, address and telephone number of each person who assumed Sonya D. Lange's job duties at Zink. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

RESPONSE TO PRODUCTION NO. 7: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

REQUEST FOR PRODUCTION NO. 8: Please produce any and all records, memorandum, data sheets, documents, writing (see Definitions, above), etc., which memorialize or relate to the "qualifications", pursuant to Zink's requirements, for the position Sonya D. Lange held relevant to the period of September, 2012, until the present time.

RESPONSE TO PRODUCTION NO. 8: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action. Subject to that objection and as a result of a meet and confer pursuant to Local Rule CV 21 between counsel, the parties agreed a job description would be responsive. Defendant will be producing a Roles, Responsibilities, Expectations, & Authority for the Staff Accountant — Credit and Collections, 2011, position once a protective order is entered by the Court.

REQUEST FOR PRODUCTION NO. 9: Please produce all certified profit and loss statements and/or Income Tax Returns prepared in connection with your operation from the year 2010 through the present. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

**RESPONSE TO PRODUCTION NO. 9:** Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

REQUEST FOR PRODUCTION NO. 10: Please produce any and all documents, writings (see Definitions, above), emails, memos, letters, and/or recordings that regard Plaintiffs employment termination. (Request does not seek attorney-client communication, but please identify in a Privilege Log)

RESPONSE TO PRODUCTION NO. 10: All such non-privileged, responsive documents will be produced.

REQUEST FOR PRODUCTION NO. 11: Please produce any and all documents, writings (see Definitions, above), recordings and/or things that memorialized any efforts or processes you undertook to enable Sonya. D. Lange to perform her essential job functions in light of what you believed to be her work restrictions.

**RESPONSE TO PRODUCTION NO. 11:** Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

REQUEST FOR PRODUCTION NO. 12: Please produce any and all documents, emails, letters, things and/or recordings that memorialize communications between you and your Workers' Compensation insurer (or workers' compensation service agent) related to Sonya D. Lange's alleged work injury. This request does not seek attorney/client communications.

RESPONSE TO PRODUCTION NO. 12: All such responsive documents will be produced.

REQUEST FOR PRODUCTION NO. 13: Please produce any and all checks, documents, writings, things, etc., memorializing Zink's payment to Sonya D. Lange for short term disability and/or Temporary Total Disability related to the alleged work injury that is the subject of the Form 3 attached hereto as Exhibit "A".

RESPONSE TO PRODUCTION NO. 13: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action. Subject to that objection, Defendant paid no short-term disability insurance benefits to Plaintiff; thus, there are no documents. Further, Plaintiff was not receiving Temporary Total Disability benefit payments at the time of her termination; thus, there are no documents.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

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Attorneys for Defendant

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#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 9, 2014, a true and correct copy of the above and foregoing instrument was hand delivered to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Knot & Brightm

3029106v1

EXHIBIT "D"

FORM 2 Send original to			COURT OF EXISTING CLAIMS 1915 NORTH STILES OKLAHOMA CITY, OK 73105-4918						THIS SPACE FOR COURT USE ONLY					
Court of Existing Claims and 1 copy to			OKI	_AHON	IA C	i Y, OK	73105-	4918						
Insurance Carrier Please type or print. Enter all dates in MM/DD/YY format.			EMF	EMPLOYER'S FIRST NOTICE OF INJURY										
Full Name of Employee - LAST, FIRST,	MIDOLE			· En	nployee	Email Addres	s							
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Describe activities when injury occurred	with details of h	now event occur	rred. Include ob	ject or subs				ployee,						
Identify part(s) of body involved in injury	or illness													
Full Name and address of Treating Phys	cian (please b	e complete)				<u> </u>								
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Address Employer's Name and Complete Address	1			Cit	у		<del> </del>	-		itate	Zip		<u>;</u>	
Name				Fed	deral (Di	•			F	hone #				
Address  Type of business (Example: manufacturing)	no food service	e construction)		Cit	y 					tate	Zip			
				T-1							NAICS Number			
Type of Ownership: Private	l 	State	Government	<u>Ц</u>		County C	iovernment	<u></u>		Loca	al Government			
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IN THE DISTR ST	DISTRICT COURT	
SONYA D. LANGE,	)	
	)	APR 28 2014
Plaintiff,	)	
vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
JOHN ZINK CO., LLC,	)	
- a .	) ·	
Defendant.	)	

# DEFENDANT'S MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON METLIFE AND BRIEF IN SUPPORT

Pursuant to OKLA. STAT. tit. 12, § 2004.1, Defendant John Zink Co., LLC. (John Zink) submits this combined motion to quash and objection to the subpoena duces tecum served upon non-party MetLife a copy of which is attached hereto as Ex. 1 (SDT). Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(2)(b), Plaintiff shall not be entitled to receive or review the materials sought in the SDT "except pursuant to an order of" this Court.

Plaintiff has sued her former employer John Zink claiming retaliatory discharge for exercising her rights under the Workers' Compensation Act, negligent hiring/supervision/retention, and intentional infliction of emotional distress.

#### 1. OBJECTIONS TO THE SDT

On or about April 11, 2014, Plaintiff mailed the SDT to The Corporation Company in Oklahoma City. The SDT commands that MetLife produce certain categories of materials in Plaintiff's counsel's office in Tulsa on May 8, 2014. After describing the documents, the SDT goes on to command that MetLife:

Produce a copy of the original materials at the Law Offices listed above on the date set forth above <u>and/or give testimony</u> as to the whereabouts of the sought after materials.

Ex. 1 at p. 2 (emphasis added).

John Zink objects to the SDT on the basis that it cannot compel an out-of-state corporation to provide testimony. Additionally, it seeks documents beyond the scope of the Oklahoma Discovery Code. Each of these violates OKLA. STAT. tit. 12, § 2004.1, and independently is sufficient for this Court to quash the SDT.

#### II. ARGUMENT AND AUTHORITIES

## A. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(2).

The statute provides that a subpoena shall be quashed if it requires a person to travel beyond the limits of § 2004.1(A)(3). The SDT commands MetLife to "[p]roduce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials." Ex. 1 at p. 2 (emphasis added). Section 2004.1, states that a witness may be compelled to provide testimony as "authorized by subsection B of Section 3230 of" Title 12. Id. at § 2004.1(A)(3). Yet, the SDT was not properly served in order to compel MetLife to produce a witness to testify in Oklahoma. See OKLA. STAT. tit. 12, § 3230(B)(1) ("A witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or residence or the county where he or she is located when the subpoena is served.")<sup>1</sup> It was served upon The Corporation Company — not MetLife. Based upon a search of the records of the Oklahoma Secretary of State and the undersigned's information and belief, MetLife is a foreign corporation. Ex. 2.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> There is also no indication that MetLife was served with the appropriate witness fee or mileage. OKLA. STAT. tit. 12, § 2004.1(B)(1).

<sup>&</sup>lt;sup>2</sup> There was not an entity with simply the name "MetLife." Attached is the information for MetLife Group, Inc. which had the registered service agent used by Plaintiff.

Plaintiff cannot compel an out-of-state corporation to send a representative into Tulsa to give testimony by simply mailing a subpoena to its registered service agent.

B. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(5), in that it seeks information from Koch Industries.

Section 2004.1 provides that a subpoena shall be quashed if it requests the production of documents or materials that fall outside the scope of discovery permitted by Section 3226. That law provides that

[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OKLA. STAT. tit. 12, § 3226(B)(1)(a).

The SDT continually seeks the production of information from "John Zink, LLC, a/k/a Koch Industries." Yet, John Zink is not "also known as" Koch Industries. They are separate and distinct corporate entities. John Zink was Lange's employer. Koch Industries was not. John Zink is a defendant in this lawsuit. Koch Industries is not.

Plaintiff's reference to them as a single, indistinguishable corporate entity is confusing and could mislead MetLife into producing irrelevant information and information beyond the scope of permitted discovery.

#### **CONCLUSION**

WHEREFORE, Defendant John Zink Co., LLC., requests that this motion be granted and that the subpoena duces tecum be quashed. Alternatively, Defendant requests that the Subpoena Duces Tecum be modified such that MetLife not be required to produce Koch Industries' documents.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL &

ANDERSON, L.L.P.

By:

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 28, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

MetLife c/o The Corporation Company 1833 S. Morgan Road Oklahoma City, OK 73128

Kristen L. Brightmire

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	)
Plaintiff,	)
vs.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	) ) ) )
Defendant.	)

#### SUBPOENA DUCES TECUM - CIVIL

TO: METLIFE c/o

The Corporation Company 1833 S. Morgan Road OKC, OK 73128

#### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8th day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

Sonya D. Lange: formerly employed at John Zink Co., LLC, a/k/a Koch Industries (S. Lange DOB ), specifically:

1. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's absence from work. This request does not seek attorney/client communications; and,

1

REDACTED

**EXHIBIT 1** 

- communications between you and John Zink, LLC, a/k/a Koch Industries, (its
  officers, managers, supervisors or authorized representative) related to
  Lange's period of disability (time off work to recover or healing period and
  period of restricted work duty that employer could not accommodate). This
  request does not seek attorney/client communications; and,
- 3. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's ability to return to work following a period of disability. This request does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care related to a period of disaiblity. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions related to a period of disability. This request does not seek attorney/client communications.
- 6. Copies of any and all Disability payments (short term or long term) from you to Sonya D. Lange related to her employment with John Zink, LLC, a/k/a Koch Industries.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

ssued this // day of

2014

Respectfully Submitted,

Tim Gilpin, OBA #11844 GILPIN LAW OFFICE 1874 South Boulder TULSA, OK 74119 (918) 583-8900 telephone (918) 796-5724 fax

(918) 796-5724 fax timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

#### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al.

Two West Second Street, Suite 700

Tulsa, OK 74103-3117

on this 1/ day o

2014

Tim Gilpin

#### METLIFE GROUP, INC.

Details

Filing Number:

2300704519

Name Type:

Legal Name

Status:

In Existence

Corp type:

Foreign For Profit Business Corporation

Jurisdiction:

**NEW YORK** 

Formation Date:

27 Dec 2002

Registered Agent Information Name:

THE CORPORATION COMPANY

Effective:

N/A

Address:

1833 S MORGAN RD

City, State , ZipCode:

OKLAHOMA CITY OK 73128

IN THE DIST	DISTRICT COURT						
SONYA D. LANGE,	)	APR 28 2014					
Plaintiff,	Plaintiff,						
vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY					
JOHN ZINK CO., LLC,	)						
Defendant.	<b>)</b>						

# DEFENDANT'S MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON BROADSPIRE MANAGEMENT SERVICES, INC. AND BRIEF IN SUPPORT

Pursuant to OKLA. STAT. tit. 12, § 2004.1, Defendant John Zink Co., LLC. (John Zink) submits this motion to quash and objection to the subpoena duces tecum served upon non-party Broadspire Management Services, Inc. (Broadspire), a copy of which is attached hereto as Ex. 1 (SDT). Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(2)(b), Plaintiff shall not be entitled to receive or review the materials sought in the SDT "except pursuant to an order of" this Court.

Plaintiff has sued her former employer John Zink claiming retaliatory discharge for exercising her rights under the Workers' Compensation Act, negligent hiring/supervision/retention, and intentional infliction of emotional distress. Broadspire is a third-party administrator involved in the processing of Plaintiff's workers' compensation claim.

#### I. OBJECTIONS TO THE SDT

On or about April 11, 2014, Plaintiff mailed the SDT to The Corporation Company in Oklahoma City. The SDT commands that Broadspire produce certain categories of materials in Plaintiff's counsel's office in Tulsa on May 8, 2014. After describing these categories, the SDT goes on to command that Broadspire:

Produce a copy of the original materials at the Law Offices listed above on the date set forth above <u>and/or give testimony</u> as to the whereabouts of the sought after materials.

Ex. 1 at p. 2 (emphasis added).

John Zink objects to the SDT on the basis that it cannot compel an out-of-state corporation to provide testimony. Additionally, it seeks documents beyond the scope of the Oklahoma Discovery Code. Each of these violates OKLA. STAT. tit. 12, § 2004.1 and is grounds for this Court to quash the SDT.

#### H. ARGUMENT AND AUTHORITIES

A. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(2).

The statute provides that a subpoena shall be quashed if it requires a person to travel beyond the limits of § 2004.1(A)(3). The SDT commands Broadspire to "[p]roduce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials." Ex. 1 at p. 2 (emphasis added). Section 2004.1, states that a witness may be compelled to provide testimony as "authorized by subsection B of Section 3230 of" Title 12. Id. at § 2004.1(A)(3). Yet, the SDT was not properly served in order to compel Broadspire to produce a witness to testify in Oklahoma. See Okla. Stat. tit. 12, § 3230(B)(1) ("A witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or residence or the county where he or she is located when the subpoena is served.")<sup>1</sup> It was served upon The Corporation Company – not Broadspire. According to the Oklahoma Secretary

<sup>&</sup>lt;sup>1</sup> There is also no indication that Broadspire was served with the appropriate witness fee or mileage. OKLA. STAT. tit. 12, § 2004.1(B)(1).

of State's records, Broadspire is a foreign corporation organized under the laws of Delaware. Ex. 2.

Plaintiff cannot compel an out-of-state corporation to send a representative into Tulsa to give testimony by simply mailing a subpoena to its registered service agent.

B. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(5), in that it seeks information from Koch Industries.

Section 2004.1 provides that a subpoena shall be quashed if it requests the production of documents or materials that fall outside the scope of discovery permitted by Section 3226. That law provides that

[plarties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OKLA. STAT. tit. 12, § 3226(B)(1)(a).

The SDT continually seeks the production of information from "John Zink, LLC, a/k/a Koch Industries." Yet, John Zink is not "also known as" Koch Industries. They are separate and distinct corporate entities. John Zink was Lange's employer. Koch Industries was not. John Zink is a defendant in this lawsuit. Koch Industries is not.

Plaintiff's reference to them as a single, indistinguishable corporate entity is confusing and could mislead Broadspire into producing irrelevant information and information beyond the scope of permitted discovery.

#### **CONCLUSION**

WHEREFORE, Defendant John Zink Co., LLC., requests that the subpoena duces tecum served upon Broadspire Management Services, Inc., be quashed in its entirety. Alternatively, Defendant requests that the Subpoena Duces Tecum be modified such that Broadspire not be required to produce Koch Industries' documents.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 28, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Broadspire Management Services, Inc., c/o The Corporation Company 1833 S. Morgan Road Oklahoma City, OK 73128

Kristen L. Brightmire

3042887v1

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	}
Plaintiff,	{
vs.  JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell ) ) )
Defendant.	)

#### SUBPOENA DUCES TECUM - CIVIL

TO: Broadspire Management Services, Inc., c/o
The Corporation Company
1833 S. Morgan Road
OKC, OK 73128

#### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8<sup>th</sup> day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

1. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's absence from work due to an alleged work injury. This request does not seek attorney/client communications; and,

1

- communications between you and John Zink, LLC, a/k/a Koch Industries, (its
  officers, managers, supervisors or authorized representative) related to
  Lange's temporary total disability (time off work to recover or healing period
  and period of restricted work duty that employer could not accommodate) due
  to an alleged work injury. This request does not seek attorney/client
  communications; and,
- 3. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's ability to return to work from an alleged work injury. This request does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

Issued this // day of April , 2014.

Respectfully Submitted,

Tim Gilpin, OBA #11844
GILPIN LAW OFFICE
1874 South Boulder
TULSA, OK 74119
(918) 583-8900 telephone
(918) 796-5724 fax
timgilpin@gilpinlaw.net
Attorney for Plaintiff, Sonya D. Lange

#### CERTIFICATE OF MAILING

1, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this

, 2014.

Tim Gilpin

#### BROADSPIRE MANAGEMENT SERVICES, INC.

Details

Filing Number:

2312022781

Name Type:

Legal Name

Status:

In Existence

Corp type:

Foreign For Profit Business Corporation

Jurisdiction:

DELAWARE, USA

Formation Date:

18 Nov 2003

Registered Agent Information Name:

THE CORPORATION COMPANY

Effective:

18 Nov 2003

Address:

1833 S MORGAN RD

City, State , ZipCode:

OKLAHOMA CITY OK 73128

IN THE DIST	DISTRICT COURT	
SONYA D. LANGE,	)	APR <b>28</b> 2014
Plaintiff,	· )	•
vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
JOHN ZINK CO., LLC,	)	
Defendant.	)	

## DEFENDANT'S MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON CRAWFORD & COMPANY AND BRIEF IN SUPPORT

Pursuant to OKLA. STAT. tit. 12, § 2004.1, Defendant John Zink Co., LLC. (John Zink) submits this combined motion to quash and objection to the subpoena duces tecum served upon non-party Crawford & Company, (Crawford), a copy of which is attached hereto as Ex. 1 (SDT). Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(2)(b), Plaintiff shall not be entitled to receive or review the materials sought in the SDT "except pursuant to an order of" this Court.

Plaintiff has sued her former employer John Zink claiming retaliatory discharge for exercising her rights under the Workers' Compensation Act, negligent hiring/supervision/retention, and intentional infliction of emotional distress. Based upon information and belief, Crawford is the parent corporation of the corporation which is the third-party administrator involved in the processing of Plaintiff's workers' compensation claim.

#### I. OBJECTIONS TO THE SDT

On or about April 11, 2014, Plaintiff mailed the SDT to The Corporation Company in Oklahoma City. The SDT commands that Crawford produce certain categories of materials in Plaintiff's counsel's office in Tulsa on May 8, 2014. After describing the documents, the SDT goes on to command that Crawford:

Produce a copy of the original materials at the Law Offices listed above on the date set forth above <u>and/or give testimony</u> as to the whereabouts of the sought after materials.

Ex. 1 at p. 2 (emphasis added).

John Zink objects to the SDT on the basis that it cannot compel an out-of-state corporation to provide testimony and it goes beyond the scope of the Oklahoma Discovery Code. Each of these violates Okla. Stat. tit. 12, § 2004.1, and is independently is sufficient for this Court to quash the SDT.

#### II. ARGUMENT AND AUTHORITIES

A. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(2).

The statute provides that a subpoena shall be quashed if it requires a person to travel beyond the limits of § 2004.1(A)(3). The SDT commands Crawford to "[p]roduce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials." Ex. 1 at p. 2 (emphasis added). Section 2004.1, states that a witness may be compelled to provide testimony as "authorized by subsection B of Section 3230 of" Title 12. Id. at § 2004.1(A)(3). Yet, the SDT was not properly served in order to compel Crawford to produce a witness to testify in Oklahoma. See OKLA. STAT. tit. 12, § 3230(B)(1) ("A witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or residence or the county where he or she is located when the subpoena is served.")<sup>1</sup> It was served upon The Corporation Company — not Crawford. Based upon a search of the records of the Oklahoma Secretary of State, Crawford is a foreign corporation. Ex. 2.

<sup>&</sup>lt;sup>1</sup> There is also no indication that Crawford was served with the appropriate witness fee or mileage. OKLA. STAT. tit. 12, § 2004.1(B)(1).

Plaintiff cannot compel an out-of-state corporation to send a representative into Tulsa to give testimony by simply mailing a subpoena to its registered service agent.

B. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(5), in that it seeks Form 2s.

Section 2004.1 provides that a subpoena shall be quashed if it requests the production of documents or materials that fall outside the scope of discovery permitted by Section 3226. That law provides that

[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OKLA. STAT. tit. 12, § 3226(B)(1)(a).

The SDT commands Crawford to produce:

6. Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Ex. 1 at p. 2 (emphasis added). John Zink objects to this request as falling outside of the discovery permitted by Section 3226.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> To the extent this Argument involves a discovery dispute, counsel has conferred with Plaintiff's counsel about the substance of this dispute in good faith but has been unable to reach an agreement. The relevance of other Form 2s is the subject of Plaintiff's Request for Production No. 3. The parties have exchanged correspondence and had an in-person conference to discuss this issue. On April 23, 2014, Plaintiff filed her Motion to Compel which addresses this issue.

#### 1. Form 2s are confidential and should not be disclosed.

A Form 2 is a document used to advise the Workers' Compensation Court and the insurance carrier of a possible on the job injury or accident. On the face of a Form 2 it reads:

A Form 2 must be sent to the Workers' Compensation Court and to the Employer's Workers' Compensation Insurance Carrier within 10 days, or a reasonable time thereafter, of learning that an employee has suffered an accidental injury which results in lost time beyond the shift, or requires medical attention away from the work site, fatal or otherwise. Form 2s filed with the Workers' Compensation Court are confidential and not subject to public disclosure except as authorized by law.

Ex. 3 (emphasis added). While clearly Plaintiff and her representatives would be entitled to review her Form 2 in this litigation, which was produced in this case, she is not entitled to review the Form 2 related to every person employed by John Zink, never mind Koch Industries.

John Zink is unaware of any law authorizing the disclosure of Form 2s in this instance.

2. The request is not relevant to the subject matter involved in the pending action, either to the claim of the party seeking discovery or to the claim or defense of any other party.

Plaintiff has filed a lawsuit alleging she was discharged in retaliation for her exercising her rights under the Workers' Compensation Act. Plaintiff has "the burden of proving that retaliation for the exercise of rights granted under the Workers' Compensation Act played a significant part in the employer's decision to terminate [her]." Thompson v. Medley Material Handling, Inc., 1987 OK 2, ¶ 6. At the time of her discharge, she was on an extended leave of absence for a non-work-related illness, had exhausted her Family and Medical Leave Act, and had provided information to John Zink from her physician that she would not be able to return to work in the near future. She was not receiving Temporary Total Disability under the Workers' Compensation Act. Indeed, by her own admission, Plaintiff is still unable to work. Her discharge was unrelated to her prior claim under the Workers' Compensation Act.

Turning to SDT request - the Form 2s filed by John Zink over a period of four years - it is hard to imagine what possible relevance they could have to the subject matter of this lawsuit. A Form 2 is a document filed by the employer of an injury or illness. It is not evidence of even a claim under the Workers' Compensation Act. It is not evidence of anything filed by an employee – the employee does not sign or even acknowledge the Form 2. A Form 2 could be filed without an employee even knowing about it.

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- Date of Birth
- Gender
- Occupation
- Nature of Illness or Injury
- Description of the event when the injury or illness occurred
- The identity of the body parts involved

It is understandable that an employee might feel angry if he thought information of this sort was given out. Then, that the employee might get a call at home one night from an attorney asking him questions about his private injury or illness, about the body part that was involved — that is

over the top. An employee for whom a Form 2 was filed might not even know a Form 2 was filed and might not ever have filed a workers' compensation claim at all. Plaintiff has made no showing sufficient to be entitled to this confidential information.

That Plaintiff has cast such a wide net in order to find any speck of evidence is indicative of the lack of actual evidence of retaliation she has.

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This request also seeks Form 2s for Koch Industries which is not a named party in this action. The other requests were appropriately limited to documents related to Plaintiff.

However, Request No. 6 is not limited to Plaintiff – it appears to also and independently seek copies of Form 2s created on behalf of Koch Industries from October 1, 2010, to the present. There is no basis for such a request in this lawsuit. Koch Industries has never employed Plaintiff and is not a party herein.

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Plaintiff's reference to them as a single, indistinguishable corporate entity is confusing and could mislead Crawford into producing irrelevant information and information beyond the scope of permitted discovery.

#### **CONCLUSION**

WHEREFORE, Defendant John Zink Co., LLC., requests that this motion be granted and that the subpoena duces tecum be quashed. Alternatively, Defendant requests that the subpoena duces tecum be modified such that Crawford not be required to respond to No. 6, not produce documents of Koch Industries, and not be required to "give testimony."

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

By

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

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Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 28, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Crawford & Company c/o The Corporation Company 1833 S. Morgan Road Oklahoma City, OK 73128

Kristen L. Brightmire

3042904v1

## IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	)
Plaintiff,	) )
vs.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC., a Foreign Limited Liability	
Company,	<b>)</b>
Defendant.	)

#### SUBPOENA DUCES TECUM - CIVIL

TO: Crawford & Company, clo
The Corporation Company
1833 S. Morgan Road
OKC, OK 73128

#### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8<sup>th</sup> day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

Oklahoma workers' compensation case of Sonya D. Lange v. John Zink Co., LLC, WCC # 2012-07091A (S. Lange DOB ), specifically:

1. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's absence from work due to an alleged work injury. This request does not seek attorney/client communications; and,

- communications between you and John Zink, LLC, a/k/a Koch Industries, (its
  officers, managers, supervisors or authorized representative) related to
  Lange's temporary total disability (time off work to recover or healing period
  and period of restricted work duty that employer could not accommodate) due
  to an alleged work injury. This request does not seek attorney/client
  communications; and,
- communications between you and John Zink, LLC, a/k/a Koch Industries, (its
  officers, managers, supervisors or authorized representative) related to
  Lange's ability to return to work from an alleged work injury. This request
  does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.
- Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

Issued this // day of

2014.

Respectfully Submitted,

Tim Gilpin, OBA #11844 GILPIN LAW OFFICE 1874 South Boulder TULSA, OK 74119 (918) 583,8900 telephone

(918) 583-8900 telephone

(918) 796-5724 fax

timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

#### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this //F

. 2014

Tim Gilpin

#### **CRAWFORD & COMPANY**

Details

Filing Number:

2300148263

Name Type:

Legal Name

Status:

Active <sup>(万)</sup>

Corp type:

Foreign For Profit Business Corporation

Jurisdiction:

GEORGIA

Formation Date:

26 Mar 1956

Registered Agent Information

Name:

THE CORPORATION COMPANY

Effective:

N/A

Address:

1833 S MORGAN RD

City, State , ZipCode:

OKLAHOMA CITY OK 73128

FORM 2			WORKERS' COMPENSATION COURT						EMPLOYER'S FIRST NOTICE OF INJURY							
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IN THE DISTI	FILE D	
SONYA D. LANGE,	)	APR 28 2014
Plaintiff,	) )	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA, TULSA COUNTY
vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	SIALE OF SALEY. TOESA COUNTY
JOHN ZINK CO., LLC,	)	
Defendant.	, )	

# DEFENDANT'S MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON OLD REPUBLIC INSURANCE COMPANY AND BRIEF IN SUPPORT

Pursuant to OKLA. STAT. tit. 12, § 2004.1, Defendant John Zink Co., LLC. (John Zink) submits this combined motion to quash and objection to the subpoena duces tecum served upon non-party Old Republic Insurance Company, (Old Republic), a copy of which is attached hereto as Ex. 1 (SDT). Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(2)(b), Plaintiff shall not be entitled to receive or review the materials sought in the SDT "except pursuant to an order of" this Court.

Plaintiff has sued her former employer John Zink claiming retaliatory discharge for exercising her rights under the Workers' Compensation Act, negligent hiring/supervision/retention, and intentional infliction of emotional distress. Based upon information and belief, Old Republic may have been a third-party administrator involved in the processing of Plaintiff's workers' compensation claim.

#### I. OBJECTIONS TO THE SDT

On or about April 11, 2014, Plaintiff mailed the SDT to Prentice Hall Corporate System in Oklahoma City. The SDT commands that Old Republic produce certain categories of materials in Plaintiff's counsel's office in Tulsa on May 8, 2014. After describing the documents, the SDT goes on to command that Old Republic:

Produce a copy of the original materials at the Law Offices listed above on the date set forth above <u>and/or give testimony</u> as to the whereabouts of the sought after materials.

Ex. 1 at p. 2 (emphasis added).

John Zink objects to the SDT on the basis that it cannot compel an out-of-state corporation to provide testimony and it goes beyond the scope of the Oklahoma Discovery Code. Each of these violates Okla. Stat. tit. 12, § 2004.1, and independently is sufficient for this Court to quash the SDT.

#### II. ARGUMENT AND AUTHORITIES

A. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(2).

The statute provides that a subpoena shall be quashed if it requires a person to travel beyond the limits of § 2004.1(A)(3). The SDT commands Old Republic to "[p]roduce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials." Ex. 1 at p. 2 (emphasis added). Section 2004.1, states that a witness may be compelled to provide testimony as "authorized by subsection B of Section 3230 of" Title 12. Id. at § 2004.1(A)(3). Yet, the SDT was not properly served in order to compel Old Republic to produce a witness to testify in Oklahoma. See OKLA. STAT. tit. 12, § 3230(B)(1) ("A witness shall be obligated to attend to give a deposition only in the county of his or her residence, a county adjoining the county of his or residence or the county where he or she is located when the subpoena is served.")<sup>1</sup> It was served upon The Prentice-Hall Corporation System – not Old Republic. Based upon a search of the records of the Oklahoma Secretary of State, Old Republic is a foreign corporation. Ex. 2.

<sup>&</sup>lt;sup>1</sup> There is also no indication that Old Republic was served with the appropriate witness fee or mileage. OKLA. STAT. tit, 12, § 2004.1(B)(1).

Plaintiff cannot compel an out-of-state corporation to send a representative into Tulsa to give testimony by simply mailing a subpoena to its registered service agent.

B. The SDT should be quashed pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(5).

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Ex. 1 at p. 2 (emphasis added). John Zink objects to this request as falling outside of the discovery permitted by Section 3226.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> To the extent this Argument involves a discovery dispute, counsel has conferred with Plaintiff's counsel about the substance of this dispute in good faith but has been unable to reach an agreement. The relevance of other Form 2s is the subject of Plaintiff's Request for Production No. 3. The parties have exchanged correspondence and had an in-person conference to discuss this issue. On April 23, 2014, Plaintiff filed her Motion to Compel which addresses this issue.

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Ex. 3 (emphasis added). While clearly Plaintiff and her representatives would be entitled to review her Form 2 in this litigation, which was produced in this case, she is not entitled to review the Form 2 related to every person employed by John Zink, never mind Koch Industries.

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Plaintiff's reference to them as a single, indistinguishable corporate entity is confusing and could mislead Old Republic into producing irrelevant information and information beyond the scope of permitted discovery.

#### **CONCLUSION**

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Respectfully submitted,

DOERNER, SAUNDERS, DANIEL &

ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 28, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Old Republic & Company c/o Prentice Hall Corporate System OK, Inc.

115 SW 89<sup>th</sup> Street

Oklahoma City, OK 73139

Kristen L. Brightmire

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	. ) .
Plaintiff,	
vs.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	) ) ) )
Defendant.	) ·

### SUBPOENA DUCES TECUM - CIVIL

TO: Old Republic Insurance Company., c/o
Prentice Hall Corporate System OK, Inc.
115 SW 89<sup>th</sup> Street
OKC, OK 73139

#### **GREETINGS:**

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Oklahoma workers' compensation case of Sonya D. Lange v. John Zink Co., LLC, WCC # 2012-07091A (S. Lange DOB ), specifically:

communications between you and John Zink, LLC, a/k/a Koch Industries, (its
officers, managers, supervisors or authorized representative) related to
Lange's absence from work due to an alleged work injury. This request does
not seek attorney/client communications; and,

- 2. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's temporary total disability (time off work to recover or healing period and period of restricted work duty that employer could not accommodate) due to an alleged work injury. This request does not seek attorney/client communications; and,
- 3. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's ability to return to work from an alleged work injury. This request does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.
- 6. Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

squed this / day of

2014.

Respectfully Submitted,

Tim Gilpin, OBA #11844 GILPIN LAW OFFICE

1874 South Boulder

TULSA, O K 74119

(918) 583-8900 telephone

(918) 796-5724 fax

timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

#### CERTIFICATE OF MAILING

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire

Sierra G. Slaton

Doerner, Saunders, et. al.

Two West Second Street, Suite 700

Tulsa, OK 74103-3117

on this // 1/2 day of

2014.

Tim Gilpin

### OLD REPUBLIC FINANCIAL ACCEPTANCE CORP

Details

Filing Number:

2300550718

Name Type:

Legal Name

Status:

In Existence

Corp type:

Foreign For Profit Business Corporation

Jurisdiction:

**DELAWARE** 

Formation Date:

11 Apr 1995

Registered Agent Information Name:

THE PRENTICE-HALL CORPORATION SYSTEM, OKLAHOMA, INC.

Effective:

N/A

Address:

115 S W 89TH ST

City, State, ZlpCode:

OKLA CITY OK 73139 8511

FORM 2		1	1915 NOR	ENSATION COURT	EMPLO	DYER'S FIRST NOTICE OF INJURY
Send original to Workers' Compensation Court Insurance Carrier Please type or print. Enter all dates	• •		OMA CITY	, OK 73105-4918		
Full Name of Employee - LAST, FIRST,	MIDDLE		Employee Ema	II Address	7	
	Oth.		State	Zip	-	
Complete Address	City		Oldic	<i>2</i> p		
Telephone Number		Social Security No	umber			
Date of Birth	Sex		Length of Emp Years	loymeni Months	To moreover, alternative contractive contr	u versionen er versionen sich versionen sich der der versionen der versionen der versionen der versionen der v
Average Weekly Wage	Occupation (job	description)	<u> </u>		Was employment	nt agreement made in Oklahoma? NO
NOTE: Mediation is availa (800) 522-8210.	able to address ce	rtain workers' cor	npensation	disputes. For information		5) 522-8760 or in-state toll free
Date of accident or last exposure	Time of accident or exp	osure	РМ 🗆	Date Employer Notified	Time workday be	o'clock AM PM
Last date employee worked	Has employee returned YES NO		· · · · · · · · · · · · · · · · · · ·	Did the employee die? YES NO	If yes, on what da	ate
OSHA Log Case #		Place of Accident or Occ City:	urrence	County	•	State:
Injury Resulted from: Single Incid	ent Cumulativ	e Trauma		employee participate in a certifled w name of CWMP:	orkplace medical p	lan: YES NO
Nature of Injury or illness	<u> </u>					
Describe activities when injury occurred	with details of how event	occurred. Include object or	substance which	directly injured the employee.	· · ·	
Identify part(s) of body involved in injury	or illness		<u></u>			
Full Name and address of Treating Phys	sician (please be complete	· ·				
Employer's Insurance Carrier or Own R	isk Group				Policy/Self-Insu	red Number · · · · · · · · · · · · · · · · · · ·
Name			Phone		Policy Period—	
Address			City		State	Zip .
Employer's Name and Complete Addre	SS				D1 . #	
Name Address			Federal ID# City		Phone # State	Zlp
Type of business (Example: manufactu	ring, food service, constru	ction)				NAICS Number
Type of Ownership: Private	J .	State Government		County Government	Loc	al Government
Upon filing this Notice of I Attorney General, a District matter relating to the notice	t Attorney or their	is given to the Adı designees to exar	ministrator on the contract of	of the Workers' Compensords relating to the notice	sation Court, e, any matter	the Insurance Commissioner, the contained in the notice, and any
Any person receiving temp employer or insurance carr employment status, occurri	rier anv change in	a material fact or	the amount	ne employer's insurance of income the employee	carrier shall is receiving	promptly report in writing to the or any change in the employee's
The undersigned hereby de complete, to the best of his	clares under pena /her knowledge. Al	ity of perjury that h ny person who com	e/she examl nmits worke	ned this notice and all sides' compensation fraud, t	atements con Ipon convicti	lained herein are true, correct and on, shall be gulity of a felony.
I hereby certify that this Fo	orm 2 was sent to	the Workers' Com	pensation			OT AN ADMISSION OF LIABILITY
Court and a copy thereof t			neiow:	the Employer's Work	ers' Compense time therea	kers' Compensation Court and to sation insurance Carrier within 10 Iter, of learning that an employee
Signed	Signature of Preparent	arer	-	has suffered an acci-	dental injury v s medical att	which results in lost time beyond   ention away from the work site.
	e and Title of Preparer	(Please Print)		fatal or otherwise. F	orm 2s filed t al end not su	with the Workers' Compensation bject to public disclosure except
Telephone Number	Area Code and Nu	mbor		as authorized by law.		

Rev. 10/10

**EXHIBIT 3** 

	OURT OF TULSA COUNTY OF OKLAHOMA	FILE D
SONYA D. LANGE, Plaintiff,	)	MAY <b>01</b> 2014
VS.	) Case No. CJ – 2014 – 00357 Judge Daman Cantrell	SALLY HOWE OMITH, COURT GLERI STATE OF OKLA, TULSA COUNTY
JOHN ZINK CO., LLC.,	)	
a Foreign Limited Liability Company,	) ) ·	
Defendant.	)	

### PLAINITFF'S SUPPLEMENT TO MOTION TO COMPEL DISCOVERY

COMES NOW, the Plaintiff, Sonya D. Lange ("Lange"), and pursuant to Local Rule CV 21, Supplements her earlier Motion to Compel filed April 23, 2014, with the following statement.

Pursuant to Local Rule CV 21, Lange and Zink's counsel have conferred *in person* with each other in good faith about the discovery disputes contained in the original Motion but have not been able to resolve the disputes.

Respectfully Submitted,

Tim Gilpin, OBA #11844
GILPIN LAW OFFICE
1874 South Boulder
TULSA, OK 74119
(918) 583-8900 telephone
(918) 796-5724 fax
timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this \_\_\_\_day of

, 2017

Tim Gilpin

	RICT COURT OF TULSA COUNTY FATE OF OKLAHOMA	DISTRICT COURT
SONYA D. LANGE,	)	MAY 0 2 2014
Plaintiff,	)	SALLY HOWE SMITH, COURT CLERK
vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	STATE OF OKLA. TULSA COUNTY
JOHN ZINK CO., LLC,	)	
Defendant.	, )	

### AGREED MUTUAL PROTECTIVE ORDER

WHEREAS, documents or information containing identification information, financial information, banking and income records, tax records, medical/mental health information or other types of sensitive information which the party making the production deems confidential may be produced or disclosed in the course of these proceedings; and

WHEREAS, disclosure of such Confidential Information might be injurious to the parties or non-parties; and

WHEREAS, good cause therefore exists for entry of a protective order pursuant to 12 O.S. § 3226(C); and

WHEREAS, the parties wish to proceed expeditiously with discovery in this action without burdening the Court with unnecessary procedural litigation;

IT IS HEREBY STIPULATED AND AGREED that the following rules and procedures shall govern all such Confidential Information obtained in this action:

1. All such documents or information produced or disclosed in the course of this action shall be used by any party to whom such documents or information is produced or disclosed solely for the purpose of this litigation only and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

#### 2. Definitions.

- (a) "Confidential Information" shall mean any information of any type, kind or character, as defined on page one (1) first "Whereas" paragraph, that is designated confidential by any party, whether it be a document (including both paper and electronic documents), information contained in a document, information revealed during a deposition, information revealed in any discovery responses or otherwise supplied or revealed during the course of, or in connection with, this litigation.
- (b) "Receiving Party" shall mean a party to this lawsuit to whom Confidential Information is disclosed.
- (c) "Producing Party" shall mean a party to this lawsuit who discloses Confidential Information to another party.

#### 3. Designations and Challenges.

(a) To designate, the Producing Party shall stamp "Confidential" or "Confidential Information" on all copies of documents they deem to contain Confidential Information. Deposition testimony or any portion thereof may be designated Confidential Information on the record at the deposition or in a letter to all counsel sent within thirty (30) days after receipt of the deposition transcript. Until this thirty-day period expires, all deposition testimony shall be considered Confidential Information unless agreed to by all Parties in writing.

Discovery responses or answers containing Confidential Information shall be set forth separately and stamped "Confidential" or "Confidential Information."

- A Receiving Party shall not be obligated to challenge the propriety of a (b) designation of Confidential Information at the time that such designation is made. Should a Receiving Party disagree, at any stage of this case, with a designation of documents or information as Confidential Information, the designation may be challenged as follows. First, the Receiving Party disputing the designation shall try to resolve such dispute informally by conferring with the Producing Party. If the dispute is not resolved informally, the Receiving Party shall identify the disputed designations in writing, to counsel for the Producing Party. The Producing Party shall have fourteen (14) calendar days from receipt of this written notice to respond in writing. If the Producing Party responds that such challenged documents do, or information does, contain Confidential Information, the dispute may be presented by motion to the Court by the Receiving Party. All documents or information designated Confidential Information shall retain that designation and shall remain subject to the terms of this Protective Order unless the Court decides that challenged documents or information shall not be covered by the terms of this Order and any and all proceedings and appeals challenging such decision shall have been concluded. Nothing shall affect any Party's right to request leave of court to be relieved of this Order for any reason.
- 4. Confidential Information, any copies thereof and any information contained therein or derived therefrom shall be made available only to the following persons when needed by them in connection with their duties in the conduct of this action:
  - (a) attorneys of record in this action and their partners or associate attorneys;

- (b) any persons regularly employed by such attorneys or their firms, when working in connection with this action under the direct supervision of partners or associate attorneys of said firms;
- (c) any independent expert or consultant who has been consulted for the purpose of being retained or who has been retained by counsel to provide assistance, expert advice or testimony in this action, and the employees of such experts or consultants when working in connection with this action under the direct supervision of said persons;
- (d) officers, directors or employees of the Receiving Party assisting counsel for that Receiving Party in the conduct of the litigation.
- (e) the court if filed under seal or with the prior written permission of the Producing Party;
- (f) court reporters or other persons preparing transcripts of testimony;
- (g) any other person on such terms and conditions as the parties may agree in writing; or
- (h) as the Court may hereafter by order direct;

provided that any person to whom any Confidential Information is disclosed pursuant to subparagraph 4(c) above shall, prior to any such disclosure, execute an Acknowledgment agreeing to abide by the terms of this Order. The Acknowledgment is appended hereto as Exhibit 1. Such Acknowledgments shall be retained by counsel of record making such disclosure, and shall be made available to counsel for the Producing Party upon a showing of reasonable cause. No person to whom Confidential Information is disclosed pursuant to the provisions of this

paragraph shall disclose Confidential Information to any person not entitled under the terms of this Order to receive it.

- 5. Notwithstanding any other provisions of this Order, Confidential Information shall not be disclosed to any employee, agent, or consultant of any competitor of the Producing Party. If any party has reason to believe that a competitor has improperly acquired or learned of Confidential Information, the Receiving Party, upon written demand from the Producing Party, shall reveal whether Confidential Information has been disclosed to any employee, agent, or consultant of such competitor company.
  - 6. The inadvertent, unintentional, or in camera disclosure of Confidential Information shall not generally be deemed a waiver, in whole or in part, of any claims of confidentiality.
  - 7. All such Confidential Information shall be used in depositions only in a manner calculated to preserve the confidentiality of such material and of those portions of the transcripts of and exhibits to such depositions which deal with such Confidential Information. Any court reporter or other person taking or preparing transcripts of a deposition at which testimony and exhibits containing Confidential Information can reasonably be expected to be disclosed will be advised of the terms of this Order and agree to be bound thereby. Only persons entitled to receive such Confidential Information pursuant to this Order may attend depositions at which Confidential Information is or is likely to be disclosed or discussed.
- 8. Nothing in paragraph 4 will preclude the Receiving Party from using any Confidential Material at the deposition of:
  - (a) present directors and officers of the Producing Party;
  - (b) former directors or officers of the Producing Party;

- (c) present or former employees, agents or representatives of the Producing Party who, at the time of their affiliation or employment with the Producing Party, had access to information identical or substantially similar to the Confidential Material to be used at his/her deposition;
- (d) any person identified in the Confidential Information as the author, addressee, or other designated recipient of the Confidential Information; and
- any other Designated Deponent provided that the procedure hereinafter (e) described is followed. When a Receiving Party wishes to use Confidential Information with a Designated Deponent, the Receiving Party must serve upon the Designated Deponent, with a copy upon counsel for the Producing Party not less than fifteen calendar days prior to the deposition, a written request for the execution of an Acknowledgment. The Receiving Party must promptly, but in no event less than two business days, advise counsel for the Producing Party of the receipt of an executed Acknowledgement by the Designated Deponent. If the Designated Deponent fails to execute an Acknowledgement, the Receiving Party shall promptly notify the Producing Party of that fact. Unless the Producing Party files a motion for protective order prior to the scheduled date of the deposition, the deposition shall go forward as scheduled, and the Producing Party, while not waiving its rights to object to the disclosure of, or testimony concerning, Confidential Information at the deposition, shall be deemed to have waived its rights to preclude, postpone, recess, or otherwise interrupt the deposition on that ground. However, if the Designated Deponent does not execute an Acknowledgement, Confidential Information shall not be used during the

deposition, shown to the deponent, or in any way referenced. If the Producing Party files a motion for protective order, the deposition shall be automatically stayed until the trial court determines the motion; provided, however, that in such event, the Receiving Party may, at its option, go forward with the deposition without the use of Confidential Information therein, and without waiving its right to resume the deposition to include the use of Confidential Information if the Court's ruling on the motion for protective order so permits.

- 9. All interrogatories or interrogatory answers, requests for admissions or answers thereto, deposition transcripts or exhibits thereto, briefs, or other documents of any kind which contain Confidential Information shall be subject to the provisions of this Order.
- In the event that any pleading or other document which contains Confidential Information is to be filed with the Court, such document shall not be filed unless a motion for, and until an order of, impoundment governing such pleading or document has been made and ruled upon by the Court. Such motion shall seek impoundment of all pleadings or documents containing Confidential Information until final disposition of the action (including the passage of any time in which to appeal or petition for certiorari), with custody thereafter to rest with counsel for the Producing Party. The parties agree not to oppose any motion for impoundment made pursuant to this paragraph. To the extent that Confidential Information can be segregated from the non-confidential material without undue burden or expense, only the Confidential Information shall be filed subject to the above terms.
- 11. At the conclusion of the action by way of final judgment (including the exhaustion of all appeals) or settlement, all Confidential Information and copies thereof and all documents containing Confidential Information in the possession, custody or control of any

Receiving Party or its counsel shall be promptly turned over to counsel for the Producing Party or destroyed. Each counsel of record for each Receiving Party shall provide a sworn statement to counsel for the Producing Party stating that all Confidential Information and copies thereof have been turned over to counsel for the Producing Party or destroyed.

- 12. Nothing herein shall be construed as waiving the right of a Producing Party to assert that particular material is subject to a claim of privilege.
- The designation of information treated as Confidential Information pursuant to 13. this Stipulation and Order shall not be construed as a concession by any party that such information is relevant or material to any issue, or does in fact contain or reflect proprietary or confidential information.
- Nothing herein shall preclude any party from applying to the Court for any 14. modification of this Order as it may deem appropriate in the circumstances; provided, however, that prior to such application, the parties involved shall make reasonable effort to resolve the matter by agreement. DAMAN CANTRELL

Judge of the District Court

Approved as to Form and Content:

Tim Gilpin, OBA No. 11844

Gilpin Law Office 1874 S Boulder

Tulsa, OK 74119

Telephone (918) 583-8900

Facsimile (918) 796-5724

timgilpin@gilpinlaw.net

Attorney for Plaintiff

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Doerner, Saunders, Daniel & Anderson, LLP

2 W 2<sup>nd</sup> St, Ste. 700

Tulsa, OK 74103

Telephone (918) 591-5204

Facsimile (918) 925-5204

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

#### **EXHIBIT 1**

### **Agreement to Maintain Confidentiality**

In consideration of Confidential Information being Disclosed to the undersigned recipient (the "Recipient"), the Recipient agrees as follows:

- 1. The Recipient represents and warrants that he/she has received a copy of the Agreed Protective Order entered in Sonya D. Lange v. John Zink Co., LLC., Case No. CJ-2014-357, In the District Court of Tulsa County, State of Oklahoma; and that the Recipient has read the Agreed Protective Order. The Recipient understands that he/she is subject to all appropriate sanctions and remedies for any violation of the Agreed Protective Order.
- 2. The Recipient represents and warrants that, upon receipt of Confidential Information, he/she will be bound by, and comply with, all provisions of the Agreed Protective Order.
- 3. The Recipient agrees that, upon receipt of the Confidential Information, he/she is personally subject to the jurisdiction of the State of Oklahoma, and further agrees that jurisdiction and venue for any action taken to enforce this Agreement is proper in the District Court of Tulsa County, State of Oklahoma. This Agreement shall be governed by, and construed under, the laws of the State of Oklahoma.
- 4. All capitalized terms in this Agreement shall have the same meaning as the same terms in the Agreed Protective Order.

Recipient
Name:Print Name
Address:

IN THE DISTRICT COURT OF TULSA COUNTY	ě
STATE OF OKLAHOMA	

DI	STI	RICT	Cou	RT D
	MA	Y - !	5 2014	

SONYA D. LANGE,	)	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULBA COUNTY
Plaintiff,	)	STATE OF OKLA. TULBA COUNTY
vs. JOHN ZINK CO., LLC,	) Case No. CJ-2014-357 ) Judge Daman Cantrell )	
Defendant.	)	

# DEFENDANT'S MOTION TO WITHDRAW DEFENDANT'S MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON BROADSPIRE MANAGEMENT SERVICES, INC.

Defendant John Zink Co., LLC. (John Zink) moves to withdraw its Motion to Quash Subpoena Duces Tecum Served Upon Broadspire Management Services, Inc., filed herein on April 28, 2014. The parties have reached an agreement as to the subject subpoena and have informed the subpoena target of this agreement by joint letter.

WHEREFORE, Defendant moves to withdraw its motion.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 5, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK. 74119

Broadspire Management Services, Inc., c/o The Corporation Company 1833 S. Morgan Road Oklahoma City, OK 73128

Kristen L. Brightmire

3048519v1

	STATE OF OKLAHOMA		E.			D
SONYA D. LANGE,	)		MA	Y - 5	2014	
Plaintiff,	) )	SALLY Sta	/ HOW TE OF	E SMITH OKLA. T	I, COURT	CLER
vs.	) Case No. CJ-2014- ) Judge Daman Cant					
JOHN ZINK CO., LLC,	)					
Defendant.	ý					

IN THE DISTRICT COURT OF TULSA COUNTY DISTRICT COURT

### DEFENDANT'S MOTION TO WITHDRAW DEFENDANT'S MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON METLIFE

Defendant John Zink Co., LLC. (John Zink) moves to withdraw its Motion to Quash Subpoena Duces Tecum Served Upon MetLife, filed herein on April 28, 2014. The parties have reached an agreement as to the subject subpoena and have informed the subpoena target of this agreement by joint letter.

WHEREFORE, Defendant moves to withdraw its motion.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 5, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

MetLife c/o The Corporation Company 1833 S. Morgan Road Oklahoma City OK 73128

Kristen L. Brightmire

3048543v1

### F L E D

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

MAY - 6 2014

### **NOTICE OF HEARING**

SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY

The following cases are set for hearing on the matters designated at the time and dates given below. Counsel or parties without counsel should appear at the hearing or disposition may be made in their absence.

CJ 2014 0357

Sonya Lange

vs. Jol

John Zink Co, LLC

Plaintiff's motion to compel is set for hearing on 5-28-14 at 4:00 pm.

DAMAN CANTRELL

DAMAN CANTRELL DISTRICT JUDGE

### **AFFIDAVIT OF MAILING**

I, Sally Howe Smith, Court Clerk of Tulsa County, hereby certify that on the day of \_\_\_\_\_\_\_, 2014, a true and correct copy of the foregoing Notice was mailed to each of the attorneys listed above and a true and correct copy of the foregoing notice was filed in each of the above foregoing cases.

Sally Howe Smith, Court Clerk

Tim Gilpin 1874 South Boulder Avenue Tulsa, OK 74119

Kristen Brightmire Two West Second Street, Suite 700 Tulsa, OK 74103

## F L E D

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

MAY - 8 2014

SONYA D. LANGE,	SALLY HOWE SMITH, COURT	CLERK
Plaintiff,	) )	
vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	
JOHN ZINK CO., LLC,		
Defendant.	j	

### DEFENDANT'S AMENDED MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON CRAWFORD & COMPANY AND BRIEF IN SUPPORT

Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(5), Defendant John Zink Co., LLC. (John Zink) submits this motion to quash/modify the subpoena duces tecum served upon non-party Crawford & Company, (Crawford), a copy of which is attached herete as Ex. 1 (SDT). Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(2)(b), Plaintiff shall not be entitled to receive or review the materials sought in the SDT "except pursuant to an order of" this Court.

Plaintiff has sued her former employer John Zink claiming retaliatory discharge for exercising her rights under the Workers' Compensation Act, negligent hiring/supervision/retention, and intentional infliction of emotional distress. Based upon information and belief, Crawford is the parent corporation of the corporation which is the third-party administrator involved in the processing of Plaintiff's workers' compensation claim.

Because the parties have reached agreement on all other issues, John Zink requests that the SDT be modified such that Request No. 6 is stricken.

#### I. ARGUMENT AND AUTHORITIES

### REQUEST NO. 6 OF THE SDT SHOULD BE STRICKEN PURSUANT TO OKLA, STAT. TIT. 12, § 2004.1(C)(3)(A)(5).

Section 2004.1 provides that a subpoena shall be quashed or modified if it requests the production of documents or materials that fall outside the scope of discovery permitted by Section 3226. That law provides that

[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OKLA. STAT. tit. 12, § 3226(B)(1)(a).

Request No. 6 of the SDT commands Crawford to produce:

6. Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Ex. 1 at p. 2. John Zink objects to this request as falling outside of the discovery permitted by Section 3226.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> To the extent this Argument involves a discovery dispute, counsel has conferred with Plaintiff's counsel about the substance of this dispute in good faith but has been unable to reach an agreement. The relevance of other Form 2s is the subject of Plaintiff's Request for Production No. 3. The parties have exchanged correspondence and had an in-person conference to discuss this issue. On April 23, 2014, Plaintiff filed her Motion to Compel which addresses this issue.

### A. Form 2s are confidential per statute and should not be disclosed.

A Form 2 is the common name for the Employer's First Notice of Injury form - a document used to advise the Workers' Compensation Court and the insurance carrier of a possible on the job injury or accident. Ex. 2. On the face of a Form 2 it reads:

A Form 2 must be sent to the Workers' Compensation Court and to the Employer's Workers' Compensation Insurance Carrier within 10 days, or a reasonable time thereafter, of learning that an employee has suffered an accidental injury which results in lost time beyond the shift, or requires medical attention away from the work site, fatal or otherwise. Form 2s filed with the Workers' Compensation Court are confidential and not subject to public disclosure except as authorized by law.

Ex. 2 (emphasis added). Form 2s are protected by law. OKLA. STAT. tit. 85, § 24.1(B) ("The report, known as the Employer's First Notice of Injury, shall be kept confidential and shall not be open to public inspection ..."). While Plaintiff and her representatives would be entitled to review plaintiff's Form 2s in this litigation, which have been produced in this case, she is not entitled to review the Form 2s filed for other employees of John Zink. John Zink is unaware of any statutory or case law authorizing the disclosure of Form 2s in this instance.

B. The request is not relevant to the subject matter involved in the pending action, either to the claim of the party seeking discovery or to the claim or defense of any other party.

Plaintiff has filed a lawsuit alleging she was discharged in retaliation for her exercising her rights under the Workers' Compensation Act. Plaintiff has "the burden of proving that retaliation for the exercise of rights granted under the Workers' Compensation Act played a significant part in the employer's decision to terminate [her]." Thompson v. Medley Material Handling, Inc., 1987 OK 2, ¶ 6. At the time of her discharge, she was on an extended leave of absence for a non-work-related illness, had exhausted her Family and Medical Leave Act, and had provided information to John Zink from her physician that she would not be able to return to

work in the near future. She was <u>not</u> receiving Temporary Total Disability under the Workers' Compensation Act. She had not received Temporary Total Disability for over one year prior to her discharge. By her own admission, Plaintiff is still not able to work. Her discharge was unrelated to her prior claim under the Workers' Compensation Act.

The Form 2s contain significant confidential information regarding other employees, which should not be produced in the absence of a clear basis for relevancy. The confidential information includes:

- Employee's name
- Address
- Telephone number
- Social Security Number
- Date of Birth
- Gender
- Occupation
- Nature of Illness or Injury
- Description of the event when the injury or illness occurred
- The identity of the body parts involved

Plaintiff has made no showing sufficient to be entitled to this confidential information.

That Plaintiff has cast such a wide net in order to find any speck of evidence is indicative of the lack of actual evidence of retaliation she has.

Plaintiff sought these same records in her Request for Production of Documents No. 3, and it is now the subject of Plaintiff's Motion to Compel filed herein on April 23, 2014. In her motion to compel, Plaintiff argues that "Lange is properly attempting to discover a pattern of behavior by Zink towards its employees. (emphasis removed)" Plaintiff cites to Wallace v. Halliburton Co., and Taylor v. Cache Nursing Centers. (Pl. Mot. to Compel at 6-7.) Plaintiff's arguments are unpersuasive.

The law cannot be stretched far enough to make a claim that the name and other confidential information of every employee by John Zink in Oklahoma who suffered or reported

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Plaintiff also cites to Taylor v. Cache Creek Nursing Centers, 1994 OK CIV APP 160, 891 P.2d 607, which affirmed the grant of summary judgment to an employer who fired its employee for being unable to perform her job after an on-the-job accident. Taylor has no bearing on the question before this Court.<sup>2</sup> In Taylor, the Court, in passing, notes there was "no evidence, for example, showing a pattern of termination of workers who filed claims . . .". Id. at ¶ 15. Taylor provides no guidance as to the discoverability or relevance of the requested documents and cannot be cited to support Plaintiff's request for Form 2s which are confidential by statute.

In a single plaintiff case, there is no authority for allowing plaintiff to seek discovery of a pattern of behavior without providing some evidence that such a pattern exists. The fact that other employees have reported on-the-job accidents or injuries in the last four years in no way establishes the elements of plaintiff's case.

<sup>&</sup>lt;sup>2</sup> Taylor is not binding and shall not be cited as precedent. OKLA. STAT. tit. 20, § 30.5.

### C. The request seeks Form 2s of Koch Industries which is overly broad.

This request also seeks Form 2s for Koch Industries which is not a named party in this action. The other requests were appropriately limited to documents related to Plaintiff. However, Request No. 6 is not limited to Plaintiff – it appears to also and independently seek copies of Form 2s created on behalf of Koch Industries from October 1, 2010, to the present. There is no basis for such a request in this lawsuit. Koch Industries has never employed Plaintiff and is not a party herein.

#### CONCLUSION

WHEREFORE, Defendant John Zink Co., LLC., requests that this motion be granted and that the subpoena duces tecum be modified to strike Request No. 6.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 8, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

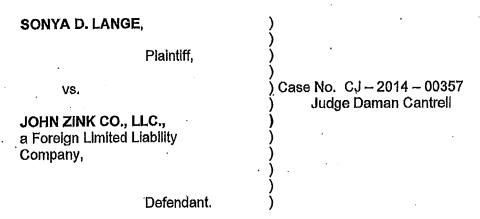
Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Crawford & Company c/o The Corporation Company 1833 S. Morgan Road Oklahoma City, OK 73128

Kristen L. Brightmire

3053054v1

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA



### SUBPOENA DUCES TECUM - CIVIL

TO: Crawford & Company, c/o
The Corporation Company
1833 S, Morgan Road.
OKC, OK 73128

#### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8<sup>th</sup> day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

Oklahoma workers' compensation case of <u>Sonya D. Lange v. John Zink Co.,</u> LLC, WCC # 2012-07091A (S. Lange DOB 6-19-69), specifically:

communications between you and John Zink, LLC, a/k/a Koch Industries, (its
officers, managers, supervisors or authorized representative) related to
Lange's absence from work due to an alleged work injury. This request does
not seek attorney/client communications; and,

- 2. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's temporary total disability (time off work to recover or healing period and period of restricted work duty that employer could not accommodate) due to an alleged work injury. This request does not seek attorney/client communications; and,
- 3. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's ability to return to work from an alleged work injury. This request does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
  - 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.
  - 6. Coples of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

Respectfully Submitted,

Tim Gilpin, OBA #11844 **GILPIN LAW OFFICE** 1874 South Boulder TULSA, OK 74119.

(918) 583-8900 telephone

(918) 796-5724 fax timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel;

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

Tim Gilpin

<b>200110</b>		WORKE	RS' COMP	ENSATION COURT	EMPLOYER'S FIRST NOTICE OF INJUR
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800) 522-8210.	Time of accident or exp	OSUTO	<del>:</del>	Date Employer Notified	Time workday began
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complete, to the best of h	ls/her knowledge. A	ny person wno c	ommits work	ers compensation trade	i, upon conviction, shall be guilty of a felony. THIS FORM IS NOT AN ADMISSION OF LIABILIT
hereby certify that this Court and a copy thereo	rorm 2 was sent to f to the Insurer on t	he date describe	ed below:	A Form 2 must be	sent to the Workers' Compensation Court and t
Signed	Signature of Prep			days, or a reasona	able time thereafter, of learning that an employe ecidental injury which results in lost time beyon
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Rev. 10/10

IN THE DIS	STRICT COURT OF TULSA COUNTY	DISTRICT COURT
	STATE OF OKLAHOMA	MAY - 8 2014
SONYA D. LANGE,	)	
Plaintiff,		FOY BALL THEOUTE GLERK
VS.	) Case No. CJ-2014-357	•
	) Judge Daman Cantrell	
JOHN ZINK CO., LLC,	)	
	)	
Defendant.	)	

# DEFENDANT'S AMENDED MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON OLD REPUBLIC INSURANCE COMPANY AND BRIEF IN SUPPORT

Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(3)(a)(5), Defendant John Zink Co., LLC. (John Zink) submits this motion to quash/modify the subpoena duces tecum served upon non-party Old Republic Insurance Company, (Old Republic), a copy of which is attached hereto as Ex. 1 (SDT). Pursuant to OKLA. STAT. tit. 12, § 2004.1(C)(2)(b), Plaintiff shall not be entitled to receive or review the disputed materials "except pursuant to an order of" this Court.

Plaintiff has sued her former employer John Zink claiming retaliatory discharge for exercising her rights under the Workers' Compensation Act, negligent hiring/supervision/retention, and intentional infliction of emotional distress. Based upon information and belief, Old Republic may have been a third-party administrator involved in the processing of Plaintiff's workers' compensation claim.

Because the parties have reached agreement on all other issues, John Zink requests that the SDT be modified such that Request No. 6 is stricken.

# I. ARGUMENT AND AUTHORITIES

# REQUEST NO. 6 OF THE SDT SHOULD BE STRICKEN PURSUANT TO OKLA. STAT. TIT. 12, § 2004.1(C)(3)(A)(5).

Section 2004.1 provides that a subpoena shall be quashed or modified if it requests the production of documents or materials that fall outside the scope of discovery permitted by Section 3226. That law provides that

[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OKLA. STAT. tit. 12, § 3226(B)(1)(a).

Request No. 6 of the SDT commands Old Republic to produce:

6. Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Ex. 1 at p. 2. John Zink objects to this request as falling outside of the discovery permitted by Section 3226.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> To the extent this Argument involves a discovery dispute, counsel has conferred with Plaintiff's counsel about the substance of this dispute in good faith but has been unable to reach an agreement. The relevance of other Form 2s is the subject of Plaintiff's Request for Production No. 3. The parties have exchanged correspondence and had an in-person conference to discuss this issue. On April 23, 2014, Plaintiff filed her Motion to Compel which addresses this issue.

# A. Form 2s are confidential per statute and should not be disclosed.

A Form 2 is the common name for the Employer's First Notice of Injury form - a document used to advise the Workers' Compensation Court and the insurance carrier of a possible on the job injury or accident. Ex. 2. On the face of a Form 2 it reads:

A Form 2 must be sent to the Workers' Compensation Court and to the Employer's Workers' Compensation Insurance Carrier within 10 days, or a reasonable time thereafter, of learning that an employee has suffered an accidental injury which results in lost time beyond the shift, or requires medical attention away from the work site, fatal or otherwise. Form 2s filed with the Workers' Compensation Court are confidential and not subject to public disclosure except as authorized by law.

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# B. The request is not relevant to the subject matter involved in the pending action, either to the claim of the party seeking discovery or to the claim or defense of any other party.

Plaintiff has filed a lawsuit alleging she was discharged in retaliation for her exercising her rights under the Workers' Compensation Act. Plaintiff has "the burden of proving that retaliation for the exercise of rights granted under the Workers' Compensation Act played a significant part in the employer's decision to terminate [her]." Thompson v. Medley Material Handling, Inc., 1987 OK 2, ¶ 6. At the time of her discharge, she was on an extended leave of absence for a non-work-related illness, had exhausted her Family and Medical Leave Act, and had provided information to John Zink from her physician that she would not be able to return to

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In a single plaintiff case, there is no authority for allowing plaintiff to seek discovery of a pattern of behavior without providing some evidence that such a pattern exists. The fact that other employees have reported on-the-job accidents or injuries in the last four years in no way establishes the elements of plaintiff's case.

<sup>&</sup>lt;sup>2</sup> Taylor is not binding and shall not be cited as precedent. OKLA. STAT. tit. 20, § 30.5.

# C. The request seeks Form 2s of Koch Industries which is overly broad.

This request also seeks Form 2s for Koch Industries which is not a named party in this action. The other requests were appropriately limited to documents related to Plaintiff. However, Request No. 6 is not limited to Plaintiff – it appears to also and independently seek copies of Form 2s created on behalf of Koch Industries from October 1, 2010, to the present. There is no basis for such a request in this lawsuit. Koch Industries has never employed Plaintiff and is not a party herein.

## **CONCLUSION**

WHEREFORE, Defendant John Zink Co., LLC., requests that this motion be granted and that the subpoena duces tecum be modified to strike Request No. 6.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

By: Kristy Z Bu

Kristen L. Brightmire, OBA No. 14239

Sierra G. Salton, OBA No. 31212

Williams Center, Tower II

Two West Second Street, Suite 700

Tulsa, Oklahoma 74103-3117

Telephone (918) 582-1211

Facsimile (918) 591-5360

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 8, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Old Republic & Company c/o Prentice Hall Corporate System OK, Inc. 115 SW 89<sup>th</sup> Street Oklahoma City, OK 73139

Kristen L. Brightmire

3048306v1

# IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	. ) .
Plaintiff,	<u>,</u>
Vs.	) Case No. CJ – 2014 – 00357 ) Judge Daman Cantrell
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	
Defendant.	) ) ·

## SUBPOENA DUCES TECUM - CIVIL

TO: Old Republic Insurance Company., c/o
Prentice Hall Corporate System OK, Inc.
115 SW 89<sup>th</sup> Street
OKC, OK 73139

### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8<sup>th</sup> day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

Oklahoma workers' compensation case of <u>Sonya D. Lange v. John Zink Co., LLC, WCC # 2012-07091A (S. Lange DOB 6-19-69)</u>, specifically:

communications between you and John Zink, LLC, a/k/a Koch Industries, (its
officers, managers, supervisors or authorized representative) related to
Lange's absence from work due to an alleged work injury. This request does
not seek attorney/client communications; and,

- 2. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's temporary total disability (time off work to recover or healing period and period of restricted work duty that employer could not accommodate) due to an alleged work injury. This request does not seek attorney/client communications; and,
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- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.
- 6. Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

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In order to allow objections to the production of documents and things to be to be filled, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

ssued this // day of

, 2014.

Respectfully Submitted,

Tim Gilpin, OBA #11844 GILPIN LAW OFFICE 1874 South Boulder

TULSA, O K 74119

(918) 583-8900 telephone

(918) 796-5724 fax

timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

# CERTIFICATE OF MAILING

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this // 1/2 day of

, 2014.

Tim Gilpin

CODMO				PENSATION COURT	EMPL	OYER'S FIRST NOTICE OF INJURY
Send original to				RTH STILES		THIS SPACE FOR COURT USE ONLY
Workers' Compensation Court	and 1 copy to	OKLAHO	MA CIT	Y, OK 73105-4918		
Insurance Carrier Please type or print. Enter all dates	in MM/DD/YY format.					•
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NOTE: Mediation is availa	ble to address certa	in workers' com	pensation	disputes. For informati	on, call (405	i) 522-8760 or in-state toll free
(800) 522-8210.			•			
Date of accident or last exposure	Time of accident or exposu		-м □	Date Employer Notified	Time workday b	egan o'clock AM PM P
			~M L.J	Did the employee die?	<u> </u>	OCIOCK AWI LI FIN LI
Last date employee worked	Has employee returned to v	Work? If yes, on what date		YES NO	If yes, on what d	alo
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Injury Resulted from: Single incide	nt Cumulative Tr	auma 🔲		s employee participate in a certified w s, name of CWMP:	orkpláce medical p	lan: YES NO N
Nature of Injury or Illness		·		•		
Describe activities when injury occurred	with details of how event occ	urred, include object or s	ubstance which	ch directly injured the employee.	,	
Identify part(s) of body involved in injury	or Illness				<u> </u>	
Full Name and address of Treating Phys	ician (olease be complete)	-	· · · · · · · · · · · · · · · · · · ·			
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Employer's Insurance Carrier or Own Ris	sk Group				Policy/Self-Inst	ued Number
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Address			Cily	٠	State	 Zip
Employer's Name and Complete Addres	9					
Name			Federal ID#		Phone #	•
Address			City		State	Zlp
Type of business (Example: manufactur	ing, food service, construction	n)				NAICS Number
Type of Ownership: Private	Sta	le Government		County Government	Loc	al Government
Upon filling this Notice of In	jury, permission is Attorney or their de	given to the Adm esignees to exami	inistrator ine all rec	of the Workers' Compensords relating to the notice	sation Court, e, any matter	the Insurance Commissioner, the contained in the notice, and any
Any person receiving temperature or insurance carriemployment status, occurrir	er anv change in a	material fact or th	ne amoun	the employer's insurance it of income the employee	carrier shall is receiving	promptly report in writing to the or any change in the employee's
The underelaned hereby dec	Jares under nenaltu	of neriury that he	/she exam	nined this notice and all st ers' compensation fraud, u	atements con pon convicti	lained herein are true, correct and on, shall be guilty of a felony.
				<u></u>		OT AN ADMISSION OF LIABILITY
I hereby certify that this For Court and a copy thereof to	the insurer on the	date described b	elow:	A Form 2 must be se	nt to the Wor	kers' Compensation Court and to sation insurance Carrier within 10
Signed	Signature of Preparer			days, or a reasonable	e time thereat dental injury t	iter, of learning that an employee which results in lost time beyond ention away from the work site,
ByName	and Title of Preparer (Ple	ass Print		fetal or otherwise. F	orm 2s filed '	with the Workers' Compensation 1
Telephone Number				Court are confidentle as authorized by law.		bject to public disclosure except
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# IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

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SONYA D. LANGE,	)	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
Plaintiff,	)	
VS.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	,
JOHN ZINK CO., LLC,	) .	
Defendant.	. )	

# DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL AND COMBINED DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Defendant John Zink Co., LLC ("John Zink") submits this response in opposition to Plaintiff's Motion to Compel Discovery and its combined Motion for Protective Order.

### I INTRODUCTION

- 1. John Zink is a worldwide leader in state-of-the-art combustion engineering research programs and in manufacturing advanced combustion equipment and air pollution control systems. Its Tulsa facility has approximately 850 employees.
- 2. Plaintiff was employed by John Zink in Tulsa as a Staff Accountant on September 29, 2008.
- 3. During the course of her employment, Plaintiff was provided with several leaves of absence. Some were related to workers' compensation issues, some were related to issues arising under the Family and Medical Leave Act (FMLA), and others were unrelated to either.
- 4. Plaintiff filed a claim for workers' compensation benefits for which she received temporary total disability (TTD) in July and August 2011. Plaintiff filed other claims but they were contested. After August 2011, plaintiff never received and was never awarded any additional TTD benefits while employed at John Zink.

- 5. In the summer of 2012, Plaintiff advised John Zink that she would need leave for surgery and that she would be off work from July 24 until August 6. This was designated as protected leave under the FMLA. On August 8, she provided a revised Certification of Health Care Provider form indicating she would be off work through September 3, resulting in an extension of her FMLA leave. Ex. 1. On or about August 31, she submitted another Certification extending her leave through October 1. Ex. 2. Plaintiff was advised that her FMLA leave was expiring and she was asked to provide updated medical information on her anticipated return to work. John Zink received a Certification from her treating health care provider stating she would need to be completely off work for at least one additional month due to a new condition, not previously disclosed. FMLA Form, Ex. 3.
- 6. According to her own treating physician, Plaintiff had been unable to perform her job since July 24, 2012, and remained unable to perform her job as of October 1, 2012, despite having exhausted her FMLA leave. Her treating physician further advised that she would not be able to return to work at all for at least one additional month, but perhaps longer. None of this leave time was covered by TTD as set forth in the Workers' Compensation Act.
- 7. At that time, John Zink made the determination to discharge Plaintiff, given that she had exhausted all of her applicable leave and remained unable to return to work. Under the circumstances, John Zink determined it was uncertain when, if at all, Plaintiff would be able to return to work. Plaintiff was terminated on October 5, 2012.

<sup>2</sup> This new condition has also never been determined to be the result of a work-related injury.

<sup>&</sup>lt;sup>1</sup> To date, the condition for which Plaintiff went out of work on 7/24/2012 has never been determined to be the result of a work-related injury.

8. Plaintiff admits that she has not been able to work at all since her discharge (a period of 19 months) as a result of her various medical conditions. Plaintiff's Ans. to Int. No. 10, Ex. 4.

### II. APPLICABLE LAW

In addition to the tort claims of negligent hiring/supervision/retention (for which there is a pending motion to dismiss) and the intentional infliction of emotional distress, Plaintiff sues for retaliatory discharge in violation of Okla. Stat. tit. 85, § 341, which reads in pertinent part:

- A. No employer may discharge ... any employee because the employee has in good faith:
  - 1. Filed a claim; ...
- B. No employer may discharge any employee during a period of temporary total disability solely on the basis of absence from work.

However, the statute also provides:

C. After an employee's period of temporary total disability has ended, no employer shall be required to rehire or retain any employee who is determined to be physically unable to perform assigned duties. The failure of an employer to rehire or retain any such employee shall not be deemed a violation of this section.

With regard to the discovery provisions at issue, the relevant statute is as follows:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

OKLA. STAT. tit. 12, § 3226(B)(1)(a) (emphasis added). Each discovery request must be relevant to the subject matter in this action and relate to the claim or defense of Plaintiff or John Zink.

For the reasons set forth below, John Zink requests that Plaintiff's Motion to Compel be denied in its entirety. In the alternative, it requests as to certain issues that it be granted a protective order under Okla. Stat. tit. 12, § 3226(C).

# III. DISPUTED DISCOVERY REQUESTS

# A. Answers to Interrogatories

Plaintiff has moved to compel different answers to her Interrogatory Nos. 11 and 12. Each is addressed herein.

INTERROGATORY NO. 11: Identify (see Definition "C", above) all persons who were hired, or assigned by you, since October, 2012, to the employment duties which were performed by Sonya D. Lange prior to her termination at the location she worked at.

ANSWER TO INTERROGATORY NO. 11: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

This information sought is not relevant to the subject matter of Plaintiff's claim which is whether John Zink retaliated against Plaintiff because she filed a worker's compensation claim. Plaintiff states in her Motion to Compel that this request "goes to the defense that Lange's position was eliminated." However, John Zink is not now and will not claim position elimination as a defense.

The only other argument Plaintiff makes to support her need for this information is the following sentence:

"if a replacement employee exists, that employee's qualifications compared to Lange, lack of a work injury record, absentee history, physical limitations, restrictions or disabilities (or lack thereof) are relevant by comparison to prove that Lange was fired due to suffering a work injury with resulting restrictions and/or filing a workers' compensation claim." (Pl. Mot. to Compel at p. 4)

Plaintiff's argument is inapplicable – there will never be a comparison between Plaintiff and a replacement. This was not a situation where John Zink was considering whether to allow

Plaintiff to return to work or whether to replace her. Plaintiff's physician did not release her to return to work. By her own admission, Plaintiff has been unable to work from July 24, 2012 to date and continuing (a period in excess of 21 months). Furthermore, Plaintiff's termination occurred more than one year after the last time the Workers' Compensation Court had determined her eligible for TTD benefits. Accordingly, there is no relevance to Plaintiff's Request for Production No. 7.

INTERROGATORY NO. 12: Identify (see Definition "C", above) fully and completely your employees, Oklahoma locations, from October 2010, to present, who have been terminated.

ANSWER TO INTERROGATORY NO. 12: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party..." OKLA. STAT. tit. 12, § 3226(B)(1)(a) (emphasis added). The name of every terminated employee is not relevant to the prima facie elements to be proven by Plaintiff: that she was employed, had an on the job injury, received treatment that put the employer on notice, and had "consequent termination of employment." Buckner v. General Motors Corp., 1988 OK 73, ¶ 8, 760 P.2d 803. It is not relevant to the legitimate reason for the discharge to be presented by John Zink – that Plaintiff was (and remains) unable to perform the duties of her job as stated by her treating physician at the time of her discharge and verified in her answers to interrogatories.

Admittedly plaintiff is seeking "a pattern of terminations or pressure put on employees" without any legal basis or support. This amounts to nothing more than an inappropriate fishing expedition without proper foundation. Not only does John Zink object to this on the basis of relevance, it now moves for a protective order under OKLA. STAT. tit. 12, § 3226(C).

As to its relevance objection, John Zink maintains that the names of employees terminated by John Zink at its Oklahoma locations over the last four years regardless of the reason is not remotely relevant to the claims asserted by Plaintiff in this lawsuit — which is the standard for discovery under § 3226(B). The request is not limited to particular work groups within which the plaintiff was employed, or particular supervisors with whom she worked, let alone the fact that it fails to limit the types of terminations to be considered.

Should the Court at all entertain the notion that John Zink should be required to respond to this Interrogatory, John Zink requests a protective order that the discovery not be had until after such time as the Court rules on John Zink's motion for partial summary judgment which it anticipates filing in the near future. Because the evidence is undisputed that Plaintiff was not receiving TTD at the time of her termination, that she was determined by her own physician not be able to work at the time of her termination, and that she evidently remains unable to work 19 months later, John Zink will be moving for summary judgment on this claim. Should this Court grant that motion, it will make this (and many of the) discovery issues moot.

# B. Responses to Requests for the Production of Documents

Plaintiff has moved to compel different responses to her Request for Production of Document Nos. 1, 2, 3, 7, 8, 9, and 10. Each is addressed herein.

**REQUEST FOR PRODUCTION NO. 1:** Please produce the complete employment or personnel file (with payroll records) of Sonya D. Lange and any documents not contained in her personnel file which relate or reflect on his employment performance, essential Zink job functions and any injuries and/or work restrictions or disability relevant to her job with Zink. This request does not seek attorney/client communications.

RESPONSE TO PRODUCTION NO. 1: Defendant objects to this request in that it requests documents as to "essential Zink job functions" and "disability." These are not relevant to the subject matter involved in the pending action and therefore not discoverable. Defendant further objects to the request for "documents not contained in her personnel file" insofar as it is overly broad and could be outside the control of the management of Defendant. Subject to those objections, Defendant will produce responsive documents.

Plaintiff does not really move to compel the production, because these documents were produced weeks ago. Plaintiff simply does not like the way they were produced. In accordance with OKLA. STAT. tit. 12, § 3234(B)(5), John Zink produced the documents as they are kept in the usual course of business. Indeed, John Zink even provided Plaintiff with a table of the files produced, even though those file labels were in the document production and could have been discerned by Plaintiff's counsel. Letter from Defendant's counsel, Ex. 5.

John Zink has met, and exceeded, its discovery obligations with regard to this request.

**REQUEST FOR PRODUCTION NO. 2:** Please produce any and all writings or documents (see Definitions, above) in your possession that relate or refer to allegations of wrongful discharge lodged against Zink, Oklahoma locations, from October, 2010, to the present. This request does not seek attorney/client communications. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

RESPONSE TO PRODUCTION NO. 2: Defendant objects to this request in that it is overly broad and not relevant to the subject matter involved in the pending action insofar as the request seeks any information other than lawsuits alleging discharge in retaliation for exercising rights under Oklahoma's Workers' Compensation Act. Subject to that objection, Defendant is not aware of any other lawsuits alleging discharge in retaliation for exercising rights under Oklahoma's Workers' Compensation Act.

Plaintiff argues that she is attempting to discover a "pattern of behavior" in this case of retaliation under the Oklahoma Workers' Compensation Act by asking John Zink to disclose information about current and former employees "who were terminated and alleged it was wrongful" under any theory. (Pl. Mot. to Compel at p. 6.) John Zink appropriately limited its response to the relevant inquiry — advising that it is not aware of any other lawsuits during the time frame suggested by Plaintiff in which an employee has alleged they were discharged in retaliation for exercising their rights under Oklahoma's Workers' Compensation Act. Plaintiff's attempt to seek information and documents beyond that exceeds the scope of relevant discovery and is not supported by the cases cited by plaintiff.

**REQUEST FOR PRODUCTION NO. 3:** Please produce the document(s), writing or things (see Definitions, above) that memorialize YOUR employees who have filed a claim for work injury in Oklahoma since October, 2010, including Workers' Compensation Form 2s. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

**RESPONSE TO PRODUCTION NO. 3:** Defendant objects to Request No. 3 to the extent it concerns employees other than the Plaintiff and seeks information not related to the subject matter of the pending litigation.

In her motion to compel, Plaintiff states, "[s]pecifically, Lange requested copies of state Workers' Compensation Form 2s." (Pl. Mot. to Compel at 6 (emphasis omitted)). Indeed, Plaintiff also sought these through subpoenas duces tecum, and John Zink has filed motions to quash those. Throughout the Rule CV 21 meetings and correspondence, there has been no discussion of any documents under this Request other than Form 2s.

A Form 2 is the common name for the Employer's First Notice of Injury form - a document used to advise the Workers' Compensation Court and the insurance carrier of a possible on the job injury or accident. On the face of a Form 2 it reads:

A Form 2 must be sent to the Workers' Compensation Court and to the Employer's Workers' Compensation Insurance Carrier within 10 days, or a reasonable time thereafter, of learning that an employee has suffered an accidental injury which results in lost time beyond the shift, or requires medical attention away from the work site, fatal or otherwise. Form 2s filed with the Workers' Compensation Court are confidential and not subject to public disclosure except as authorized by law.

Ex. 6 (emphasis added). Form 2s are protected by law. OKLA. STAT. tit. 85, § 24.1(B) ("The report, known as the Employer's First Notice of Injury, shall be kept confidential and shall not be open to public inspection ..."). While Plaintiff and her representatives would be entitled to review plaintiff's Form 2s in this litigation, which have been produced in this case, she is not entitled to review the Form 2s filed for other employees of John Zink. John Zink is unaware of any statutory or case law authorizing the disclosure of Form 2s in this instance.

The Form 2s contain significant confidential information regarding other employees, which should not be produced in the absence of a clear basis for relevancy. The confidential information includes:

- Employee's name
- Address
- Telephone number
- Social Security Number
- Date of Birth
- Gender
- Occupation
- Nature of Illness or Injury
- Description of the event when the injury or illness occurred
- The identity of the body parts involved

Plaintiff has not made a sufficient showing of relevancy to be entitled to this confidential information.

Additionally, Form 2s of other employees are not relevant and therefore not discoverable under § 3226. They do not go to the elements of Plaintiff's claim, and are not relevant to John Zink's defense.

In her motion to compel, Plaintiff argues that "Lange is properly attempting to discover a pattern of behavior by Zink towards its employees." (Emphasis removed.) Plaintiff cites to Wallace v. Halliburton Co., 1993 OK 24, 850 P.2d 1056, and Taylor v. Cache Nursing Centers, 1994 OK CIV APP 160, 891 P.2d 607. (Pl. Mot. to Compel at 6-7.) Plaintiff's arguments are unpersuasive.

The law cannot be stretched far enough to make a claim that the name and other confidential information of every employee by John Zink in Oklahoma who suffered or reported an on-the-job illness or injury is "relevant" to whether Plaintiff was discharged in retaliation for her exercise of rights under the Workers' Compensation Act. She claims it is to discover a "pattern" and that such is proper per *Wallace* and *Taylor*. John Zink takes issue with this.

The entirety of the discussion of "pattern" in Wallace is that "[e]vidence of a pattern of terminating employees who filed workers' compensation claims was offered" at trial. Wallace, 1993 OK 24 at ¶ 15. There is no discussion in Wallace as to the propriety of a plaintiff being entitled to the far-reaching discovery request made by the instant Plaintiff. There is no holding that pattern evidence is required or necessary. There is certainly no precedent or even guidance to be found in the Wallace decision on the issue before this Court.

Plaintiff also cites to Taylor v. Cache Creek Nursing Centers, , which affirmed the grant of summary judgment to an employer who fired its employee for being unable to perform her job after an on-the-job accident. Taylor has no bearing on the question before this Court. In Taylor, the Court, in passing, notes there was "no evidence, for example, showing a pattern of termination of workers who filed claims . . .". Taylor, 1994 OK CIV APP 160 at ¶ 15. Taylor provides no guidance as to the discoverability or relevance of the requested documents and cannot be cited to support Plaintiff's request for Form 2s which are confidential by statute.

In a single plaintiff case, there is no authority for allowing plaintiff to seek discovery of a pattern of behavior without providing some evidence that such a pattern exists. The fact that other employees have reported on-the-job accidents or injuries in the last four years in no way establishes the elements of plaintiff's case.

Should the Court be inclined at all to consider Plaintiff's request, John Zink respectfully requests that a protective order be entered under OKLA. STAT. tit. 12, § 3226(C). John Zink requests that this discovery not be ordered until after the Court rules on John Zink's motion for partial summary judgment on the issue of Plaintiff's claim under OKLA. STAT. tit. 85, § 341.

<sup>&</sup>lt;sup>3</sup> Taylor is not binding and shall not be cited as precedent. OKLA. STAT. tit. 20, § 30.5.

REQUEST FOR PRODUCTION NO. 7: Please produce the employment file, personnel file, including: full name, title, job description, job qualifications, address and telephone number of each person who assumed Sonya D. Lange's job duties at Zink. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

**RESPONSE TO PRODUCTION NO. 7:** Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

See Discussion of Interrogatory No. 11, supra.

Plaintiff states in her Motion to Compel that "Information on the replacement employee goes to the potential defense that Lange's position was eliminated." As previously stated, John Zink is not now and will not claim position elimination as a defense.

The only other argument Plaintiff raises to support her need for this information is the following sentence:

"if a replacement employee exists, that employee's qualifications compared to Lange, lack of a work injury record, absentee history, physical limitations, restrictions or disabilities (or lack therof) are relevant by comparison to prove that Lange was fired due to a work injury with resulting restrictions and/or filing a workers' compensation claim." (Pl. Mot. to Compel at p. 7)

This argument is not credible. Lange was discharged because, after being on medical leave for several months resulting in the exhaustion of her FMLA leave and her own treating physician certified that she would continue to be completely off work for at least one more month due to a new, previously undisclosed condition. He certified that the probable duration of the condition would be two the three months. Ex. 3. Plaintiff was completely unable to perform the duties of her job—as determined by her physician. The plaintiff's termination occurred more than one year after the last time the Workers' Compensation Court had determined her TTD and, by her own admission, she is still unable to return to work (19 months later). Accordingly, there is no relevance to Plaintiff's Request for Production No. 7.

REQUEST FOR PRODUCTION NO. 8: Please produce any and all records, memorandum, data sheets, documents, writing (see Definitions, above), etc., which memorialize or relate to the "qualifications", pursuant to Zink's requirements, for the position Sonya D. Lange held relevant to the period of September, 2012, until the present time.

RESPONSE TO PRODUCTION NO. 8: Defendant objects to this request as it is not relevant to the subject matter involved in the pending action. Subject to that objection and as a result of a meet and confer pursuant to Local Rule CV 21 between counsel, the parties agreed a job description would be responsive. Defendant will be producing a Roles, Responsibilities, Expectations, & Authority for the Staff Accountant – Credit and Collections, 2011, position once a protective order is entered by the Court. (Emphasis added).

John Zink was clear that it was withholding the requested document until such time as the Agreed Mutual Protective Order was entered. It was entered Friday, May 2, 2014. The documents were emailed to Plaintiff's counsel on Monday, May 5, 2014.

**REQUEST FOR PRODUCTION NO. 9:** Please produce all certified profit and loss statements and/or Income Tax Returns prepared in connection with your operation from the year 2010 through the present. (Plaintiff is willing to enter into an Agreed Protective Order, see proposed Order, Exhibit "E").

**RESPONSE TO PRODUCTION NO. 9:** Defendant objects to this request as it is not relevant to the subject matter involved in the pending action.

Plaintiff recites three reasons for her request for the requested financial records: defense of financial necessity for the termination, lack of ability to fill Lange's position, and the issue of punitive damages. (Pl Mot. to Compel at 8.) First, John Zink is not now and will not claim financial necessity as a defense. Second, there is no lack of ability to fill Lange's position at issue in this case. So the only reason Plaintiff has for seeking these records is her prayer for punitive damages.

Plaintiff filed this lawsuit in January. The parties have just embarked upon discovery. A motion for partial dismissal is pending, and no scheduling order has been entered. An order compelling a company to disclose its financial records at this point in the litigation seems

premature when such record would have no relevance other than as to the issue of punitive damages. "Whether or not characterized as a 'qualified privilege,' federal and state courts recognize the confidential nature of tax returns and disfavor disclosure." *Progressive Northern Ins. Co. v. Sampson*, No. 10-CV-566-GKF-PJC, 2011 WL 2748678, at \* 2 (N.D. Okla. July 14, 2011). *See also Stone v. State Farm Mutual Automobile Ins. Co.*, 185 P.3d 150 (Colo. 2008) (The "general reluctance of courts to compel the disclosure of tax returns is due to 'both the private nature of the sensitive information contained therein' and 'the public interest in encouraging the filing by taxpayers of complete and accurate returns."). Before production of confidential business information can be ordered, Plaintiff must show that such information is relevant and necessary to her action.

The interest that is to be weighed against the Defendants' interest in privacy is the Plaintiff's interest in trial preparation and disruption of trial. YWCA of Oklahoma City v. Melson, 1997 OK 81, ¶ 24, 944 P.2d 304 ("The plaintiff's right to prepare for trial and to avoid delay in the evidentiary process should be balanced against the defendant's legitimate claim to privacy."). Thus, in exercising its equitable powers pursuant to Section 3226(C), the Court should evaluate methods of protecting the Defendants' privacy interests, while at the same time weighing and evaluating the Plaintiff's need for trial preparation and to avoid trial disruption. See id. at ¶¶ 18, 24. Clearly, YWCA does not mandate an absolute entitlement to financial records. If that were the case, every plaintiff in every case could simply allege punitive damages and obtain financial information with which to harass or leverage their opponent, even though the allegations proved to be groundless.

For the reasons set forth above and because, to this point, Plaintiff has failed to allege sufficient facts to warrant a claim for punitive damages, the Motion to Compel seeking John Zink financial records should be denied. Should the Court be inclined to consider Plaintiff's request, John Zink respectfully requests that a protective order be entered under OKLA. STAT. tit. 12, § 3226(C), such that this Request for Production be held in abeyance until the pretrial conference, at which time either party may re-urge its position. This would continue to protect the confidentiality concerns of John Zink, while allowing Plaintiff to argue, in a more timely fashion, any issues of need. At that time, it would be appropriate to consider whether there are any claims remaining for which punitive damages are possible, whether Plaintiff can make a showing of need for the requested information prior to trial, and whether an in camera review is warranted.

REQUEST FOR PRODUCTION NO. 10: Please produce any and all documents, writings (see Definitions, above), emails, memos, letters, and/or recordings that regard Plaintiffs employment termination. (Request does not seek attorney-client communication, but please identify in a Privilege Log)

**RESPONSE TO PRODUCTION NO. 10:** All such non-privileged, responsive documents will be produced.

Again, Plaintiff does not complain that John Zink has not produced these documents, as John Zink has produced responsive documents. Plaintiff complains because John Zink has produced them in accordance with OKLA. STAT. tit. 12, § 3234(B)(5), as they are kept in the usual course of business. John Zink even provided Plaintiff with a table of the files produced, even though those file labels were in the document production and could have been discerned by Plaintiff's counsel. Letter from Defendant's counsel, Ex. 5 (4-9-14 Letter).

# IV. CONCLUSION

Based upon the foregoing, Defendant respectfully requests that Plaintiff's motion to compel be denied in its entirety. Defendant request further that it be granted its fees, costs, and other relief this Court deems just and equitable.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

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ssalton@dsda.com

Attorneys for Defendant

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 9, 2014, a true and correct copy of the above and foregoing instrument was mailed, with proper postage thereon, to:

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Kristen L. Brightmire

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Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act) U.S. Department of Labor Employment Standards Administration Wage and Hour Distance



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NSTRUCTIONS to the EMPLOYER: The Farmary require an employee seeking FMLA protection uponit a medical certification issued by the amployed is form to your employee. Your response is volum be employee to provide more information than allocation in the medical histories of employees oreated for FMLA protected histories of employees oreated for FMLA protected in usual personnel files and in accordance with the usual personnel files and in accordance with applies.	nay and include Leave that one because of a need for leave that yee's health care provider. Please many. While you are not required to owed under the FMLA regulations cuments relating to medical certifications as confidential medical mit 29 C.F.R. § 1630.14(o)(1), if the control of the cont	A) provides that an employer to a serious health condition to complete Section I before giving to use this form, you may not as 25 C.F.R. he 825 306-825 308 teations, recertifications, or ecords in separate files/secords to Americans with Disabilities
imployer's essential job functions:		The state of the s
NSTRUCTIONS to the EMPLOYEE: Please or rovider. The FMLA permits an employer to require extification to support a request for FMLA leave the suppoyer, your response is required to cinain or retained (0.03). Failure to provide a complete and sufficients. 20 C.F.R. § 825.313. Your employer must provide a complete and sufficients. 20 C.F.R. § 825.313. Your employer must provide a complete and sufficients.	re that you submit a timely, compi ue to your own serious health com- nin the benefit of FMLA protection	dition, if requested by your ns. 29 U.S.C. §§ 2013, alt in a denial of your FMLA
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NSTRUCTIONS to the HEALTH CARE Pro- laswer, fully and completely, all applicable parts huntion of a condition, treatment, etc. Your answ nowledge, experience, and examination of the pro- unknown," or "indetectuinate" may not be suffic- ondition for which the employee is seeking leave	By Several questions seek a responser should be your best estimate ations. Be no specific as you can be the second to determine FMI. A covers	based upon your medical terms such as "lifetime," n. Limit your responses to the
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ype of practice / Medical specialty:	Fax:(918) 90	14-4090
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received	finuld on next paul	FAIR MERAL IN THE COMMENT AND AND ADDRESS OF THE COMMENTS.

I. Approx	mate date condition commenced: unknown
Mark I	elow as applicable: patient admitted for an overaight stay in a hospital, hospice, or residential medical care facility?
No	Yes. If so, dates of sumission:
Date(8)	- 31-12   LO-14-12   8-10-15
antit de	- vibrat mand to have treatment visits at least twice per year due to the condition?NoYes.
Was me	lication, other than over-the-counter medication, prescribed? Who Lies.
	patient referred to other health care provider(s) for evaluation of treatment (e.g., physical treatment:  Yes. If so, state the nature of such treatments and expected duration of treatment:
ا خواند چی <sub>نان</sub> نیرو	Theory
2. Is the m	dical condition pregnancy? No Yes. If so, expected delivery date:
provide the emp	nformation provided by the employer in Section I to answer this question. If the employer fails to a list of the employer's essential functions or a job description, answer these questions based upon over's own description of his/her job functions.
	ployee unable to perform any of his/her job functions due to the condition:NoYes.
If so, ide	acrit is no use of Rt hardlarm
4. Describe	other relevant medical facts, if any, related to the condition for which the employee seeks leave dical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use lized equipment):
pt she	had debridement of labrum & supreyitis
Prop	O churical
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5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? NoNo	3.K
If so, estimate the beginning and ending dates for the period of incapacity: 1-24-12 to 9.	J=104
6. Will the employee need to attend follow-up treatment appointments or work part-time or on a recured schedule because of the employee's inedical condition? No Yes.	
If so, are the treatments or the reduced number of hours of work medically necessary?  No res.	
Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:	
pt will need to do PT 3 x wk for 4-lew	eek
Estimate the part-time or reduced work solvedule the employee needs, if any:	
hour(s) per days days per wook from through	
7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions?NoYesWKKOWO	
Is it medically necessary for the employee to be absent from work during the flare-ups?  NoYes. If so, explain:	
IF this rappores pt is to contact our effice	*
Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flure-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., I episode every 3 months lasting 1-2 days):	
Frequency: times per week(s) month(s)	
Duration:hours orday(s) per episode	
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	Signature of Health Care Provider Date	
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	collection of information, including the time for reviewing instructions, searching custing our sources, generally, and manufacturing control of information, that berefore	•
	the data needed, and completing and reviewing the collection of miorization. If you have my comments regarding the collection of collection of miorization. Including suggestions for reducing this burden, send them to the Administrator, Wage and Huar Division, U.S. Deputation of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.	
	Administrator, Wage and Huter Division, U.S. Deputtoest of Labor, Room 5-3502, 200 Constantion Ave., 1197, 1198, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1199, 1	
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Certification of Health Care Provider for

U.S. Department of Labor



Employee's Serious Health Condition (Family and Medical Leave Act)	Employment Standards Administration Wage and Hour Division	to low humber o
3 to the second of the second	ОМВ	Control Number: 1215-0181 Expired: 12/31/2011
INSTRUCTIONS to the EMPLOYER: The Family require an employee seeking FMLA protections submit a medical certification issued by the employee submit a medical certification issued by the employee this form to your employee. Your response is volunte the employee to provide more information than allow Employers must generally maintain records and documedical histories of employees created for FMLA puriform the usual personnel files and in accordance with Act applies.  Employee same and contact:	ly and Medical Leave Act (FMLA) provide a because of a need for leave due to a seriou a's health care provider. Please complete Sary. While you are not required to use this fixed under the FMLA regulations, 29 C.F.R. ments relating to medical certifications, recuposes as confidential medical records in se 129 C.F.R. § 1630.14(c)(1), if the American	s that an employer as health condition to lection I before giving form, you may not ask \$5,825,306-825,308. Partifications, or parate files/records as with Disabilities
Amployes's essential job functions:		
NSTRUCTIONS to the EMPLOYEE: Please comprovider. The FMLA permits an employer to require the stiffication to support a request for FMLA leave due to apply the support of t	plete Section II before giving this form to yo hat you submit a timely, complete, and suff to your own sectors health condition. If requ the benefit of FMLA protections. 29 U.S.C it medical contilication may result in a denia	iclent medicul usted by your !, §§ 2613, l of your FMLA
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ISTRUCTIONS to the HEALTH CARE PROVI ISTRUCTIONS to the HEALTH CARE PROVI Iswer, fully and completely, all applicable parts. So ration of a condition, treatment, etc. Your answer so awledge, experience, and examination of the patien aknown," or "indeterminate" may not be sufficient addition for which the employee is seeking leave. Play ratio of practice / Medical specialty:	DER: Your patient has requested leave to everal questions seek a response as to the should be your best estimate based upon you. Be as specific as you can; terms such a to determine FMLA coverage, Limit you lease be sure to sign the form on the last particle.	frequency or rour medical is "lifetime," i responses to the
received	d on Next Page" Form WH-31	80-E Rovised January 2009

**EXHIBIT 2** 

1, Approximate date condition commenced: UNKOUN
Probable duration of condition: 2-3 morths
Mark below as applicable:  Was the patient admitted for an oversight stay in a hospital, hospice, or residential medical care facility?  No Yes. If so, dates of admission:
Date(s) you treated the patient for condition:
5-31-12,6-14-12,8-6-12,8-20-12
Will the patient need to have treatment visits at least twice per year due to the condition?NoYes.
Was medication, other than over-the-counter medication, prescribed?NoXes.
Was the patient referred to other health ears provides(s) for evaluation or treatment (o.g., physical thempist)?  No
Physical Therapy
2. Is the medical condition prognancy? No Yes. If so, expected delivery date:
i. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employer's essential functions or a job description, answer these questions based upon the employee's own description of his/ker job functions.
Is the employee unable to perform any of his her job functions due to the condition:NeYes.
16 so, identify the job functions the employee is unable to perform: Patient well be now of Rtarm
Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):
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	DEAL DEFORMATION: DESIGNATION STREET, WITH EXPENSES
	Duration:hours orday(s) per episode
	Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., I episode every 3 months lasting 1-2 days):    Requency: times per week(s) month(s)
	Is it medically necessary for the employee to be absent from work during the flare-ups?  No Yes. If so, explain:
fun	ofions?NoYes. UNKNOW)
7 100n	hour(s) per day; days per week from through If the condition cause episodic flare-ups periodically preventing the employee from performing his/her job
•	Estimate the part-time or reduced work schedule the employee needs, if any;
	Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:  Of will nood to do PT 3x wk x4wks
	If so, are the treatments or the reduced number of hours of work medically necessary?  No
6, ¥	Vill the employee need to sticud follow-up treatment appointments or work part-time or on a reduced chedule because of the employee's medical condition?NoYes.
	If so, estimate the beginning and ending dates for the period of incapacity: 7-24-12 to 10-1-10
5.	Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, neluding any time for treatment and recovery? No Yes.
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Form Wit-360-F. Rovised January 2009

Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Employment Standards Administration Waga and Hour Division



OMB Control Number: 1215-018 ( Expires: 12/31/2011 SECTION I: For Completion by the EMPLOYER INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. 55 825.306.825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees oreated for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1610.14(c)(1), if the Americans with Disabilities Act applies, 10hn 2ink - Uisa 21er 9182345726 Regular work schedule: M-FB-4:30 Employee's job title: ACCOUNTANT Employee's essential job functions: Check if job description is attached: SECTION II: For Completion by the EDIRECT Still
INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical conffication may result in a denial of your FMLA request. 20 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b), Your name; SECTION III: For Completion by the HEALTH CARE PROVIDER INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage, Limit your responses to the condition for which the employee is seeking leave. Please be sure to sign the form on the last page. Provider's name and business address; Type of practice / Medical specialty: CONTINUED ON NEXT PAGE

Page !

Form WH-380-E Revised January 2009

PARTIAL MUNICAL PACTS  1. Approximate date condition commenced: 10-2-12
Probable duration of condition: 2 to 3 months
Mark below as applicable: Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?  _No _Yes. If so, dates of admission:
Date(s) you treated the patient for condition:
Will the patient need to have treatment visits at least twice per year due to the condition?NoYes.
Was medication, other than over the counter medication, prescribed?NoYes.
Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?  No Yes. If so, state the nature of such treatments and expected duration of treatment:
2. Is the medical condition pregnancy?NoYes. If so, expected delivery date:
i. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/hor job functions.
is the employee unable to perform any of his/her job functions due to the condition: No Yes.
If so, identify the job functions the employee is unable to perform:  No use at the arm
Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, disgnosts, or any regimen of continuing treatment such as the unit
of specialized equipment):  Partial Rot ouff teas  of shaving 4 shids as throscopic
Subarromal decompression
CONTINUED ON NEXT PAGE Form WH-380-E Revised January 2009

PARCE AMOUNT ON TO A VENEGOED	
5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition including any time for treatment and recovery? No Yes.	r
If so, estimate the beginning and ending dates for the period of incapacity: 10-2-10 +6	11-5-12
<ol> <li>Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition?NoYes.</li> </ol>	•
If so, are the treatments or the reduced number of hours of work medically necessary? NoTes.	
Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:	
Elu 9 3 to 4 weeks	
Estimate the part-time or reduced work schedule the employee needs, if any:	•
hour(s) per day; days per week from through	_
7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions?NoYes. White the periodically preventing the employee from performing his/her job	-
Is it medically necessary for the employee to be absent from work during the flare-ups?  NoYes. If so, explain:	
Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next of months (e.g., 1 episode every 3 months lasting 1-2 days):	2 A 4.
Frequency: times per week(s) month(s)	
Duration: hours or day(s) per episode	
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Signatu	e of Health Care Provider	Date	C-74		- <del></del>	

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT
If submitted, it is mandatory for employers to retain a copy of this disdosore in their records for three years. 39 U.S.C. § 2616; 29 C.P.R. § 625.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator. Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

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Form WH-180-F. Revised January 2009

WC benefits, see S. Lange Doc. No. 00230 - 00247.

INTERROGATORY NO. 10: From your last day worked for Defendant, describe all efforts you have made to become employed be that self-employed, employed by another, etc. If you made application for employment, identify the company(ies) by name, address, as well as the date(s), whether an interview was had, and the results of your efforts.

**RESPONSE NO. 10:** Due to work injury medical issues, Plaintiff has been temporarily totally disabled and unable to work or engage in job searches.

INTERROGATORY NO. 11: Identify by name, address, and specialty each of Plaintiff's medical providers from January 1, 2010, to the present,, including date(s) of treatment.

purdensome, and seeks information that is not relevant and would not lead to admissible evidence at trial. Further, the subject matter and scope of the Interrogatory violates Claimant's physician-patient privilege: 43A O.S. Sec. 1-109; 12 O.S. 2503; Dobson v. Edwards, 958 P. 2d 168 (Okla. 1998); Nitzel v. Jackson, 879 P. 2d 1222 (Okla. 1994); and, Seaberg v. Lockard, 800 P. 2d 230 (Okla. 1990).

However, without waiving objections, care providers relevant to the work injury at Defendant employ and related care, evaluations and reports are identified in the records produced in response to Defendant's Document Requests, S. Lange Doc. No. 0001 – 00129.

- e. the compensation to be paid to the expert witness for his/her work in this matter;
- f. list all publications authored by each expert within the preceding ten (10) years; and
- g. list all other cases which the expert has testified as an expert whether at trial or by deposition within the preceding four (4) years.

RESPONSE NO. 18: Objection. The case has only recently begun and Plaintiff has not made a determination on witnesses or experts. Further, Defendant has not yet made its responses to Plaintiff's discovery requests. However, Plaintiff will supplement as per the Court's Scheduling Order.

### **VERIFICATION**

STATE OF OKLA	.HOMA )	
	) ss	
COUNTY OF TUL	_SA )	
states that she is	the Plaintiff in the	e, being first duly sworn upon her oath deposes and above lawsuit, that she has read and understands
the contents cont	ained in the above	e Interrogatories and states that the same are true
and correct to the	best of his knowle	edge.
	A D. WOOD	Length Do (Nowe)
	ry Public f Oklahoma	Sdnya D. Lange
	n # 01019571 Expires Dec 9, 2017	
SUBSCRIBED	AND SWORN	to before me this $124$ day of
March	, 2014.	$-0$ $G \cap O$
		Suresat School
		NOTARY PUBLIC

My Commission Expires: 12-9-2017



April 9, 2014

Tim Gilpin Gilpin Law Office 1874 S Boulder Tulsa, OK 74119

Re:

Sonya D. Lange v. John Zink Co., LLC, Case No. CJ-2014-357, In the District Court

in and for Tulsa County, State of Oklahoma

**Post Meet and Confer** 

Dear Tim:

This is in response to your letters of March 22, April 4, and our meet and confer of April 4. Enclosed please find our amended discovery responses addressing Request for Admission Nos. 3, 6, and 7; Interrogatory Nos. 13 and 15; and Request for Production Nos. 3, 4, 8 and 13.

With regard to Interrogatory No. 11 and Request for Production No. 7, both of which concern on Plaintiff's replacement, I am aware of no legal authority which makes her replacement relevant to the claims or defenses raised in this lawsuit. If you have any legal authority which places this at issue, please advise.

With regard to Interrogatory No. 12 wherein you seek the Identification of all John Zink -Oklahoma employees who have been terminated since October 2010, we continue to object. The identity of these persons is not relevant to the subject matter involved in the pending action. If you have any legal authority which places this information at issue, please advise.

You asked that we identify which documents responded to each specific request for production. As I noted in our meet and confer, Defendant has produced the documents as they are kept in the usual course of business as is permitted by statute. Here is a table of the files produced:



March 17, 2014 Page 2

Source of Documents	Bates Nos.
General documentation .	JZ000108 - JZ000117
Payroll changes	JZ000004 - JZ000022
Performance	JZ000023 - JZ000050
Employee Relations Record	JZ00005 <u>.</u> 1 - JZ000107
Agreements / Acknowledgement	JZ000122 - JZ000134
Pre-Employment / New Hire	JZ000135 - JZ000156
FMLA ·	JZ000157 – JZ000169
FMLA Form/Documentation	JZ000170 - JZ000306
Emails	JZ000307 JZ000410
Other Medical Documents	JZ000411 JZ000412
Karen Miller Supervisor File	JZ000413 JZ000552
Paula Huddleston's file -	JZ000606 – JZ000869

In the meet and confer, we discussed our Response to Request for Production No. 6. You indicated that "statement" was defined. However, when I reviewed your request, I found it was not. In that "statement" is not defined, this request is extraordinarily broad and could encompass emails, notes, and the like from a variety of people, including Plaintiff. All such documents which we discovered have been produced as they are kept.

Finally, enclosed please find Defendant's privilege log.

I believe that we have addressed all of the outstanding issues. If you do have any legal authority addressing our objections, I would be happy to review it.

Sincerely,

Kristen L. Brightmire of

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

KLB

**Enclosures** 

cc: Sierra G. Salton (via email)

		WORKER	RS' COMPE	NSATION (	COURT	EMP	LOYER'S FIRST	NOTICE OF INJUR
FORM 2  end original to  Vorkers' Compensation Court and 1 copy to  1915 NORTH STILES  OKLAHOMA CITY, OK 73105-4918				THIS SPACE FOR COURT USE ONLY				
Insurance Carrier Please type or print. Enter all date	• • •	at						
Full Name of Employee - LAST, FIRST			Employee Email	Address		7		
· ·	,,							
Complete Address	City		State	Zip		]		
Telephone Number		Social Security No	ımber			1		
Date of Birth	Sex		Length of Emplo	yment Months				all trapped (1987) at the Company of Alleman Ary and Alleman Ary and Alleman Ary and Alleman Ary and Alleman Ary
Average Weekly Wage	Occupation (job	description)				Was employm	ent agreement made In	Oklahoma?
NOTE: Mediation is availa (800) 522-8210.	able to address c	ertain workers' con	npensation di	sputes. For	informatio	n, call (40	5) 522-8760 d	or in-state toll fre
Date of accident or last exposure	Time of accident or ex		РМ 🔲 D	ale Employer Notifie	be	Time workday		ам 🗆 РМ 🗖
Last date employee worked	Has employee returne	_		Did the emplo		If yes, on what	date	
OSHA Log Case #		Place of Accident or Occu City:	urrence	- <b>,</b> -'-	County:			State:
Injury Resulted from: Single Incide	ent Cumulativ	re Trauma		ployee participate in me of CWMP:	a certifled wo	rkplace medical	plan: YES	ио Ц
Nature of injury or lliness								
Describe activities when injury occurred	with details of how event	occurred. Include object or	substance which di	recity injured the en	nployee.			•
Identify part(s) of body involved in injury	or illness	<u>:</u>						
Full Name and address of Treating Phys	ician (please be complete	<b>)</b>						
			* <u>/</u>					
Employer's Insurance Carrier or Own Ri	sk Group	ુર્ભાવતા કર <b>્</b> -	81			Policy/Self-Ins		to
Name .			Phone			Policy Period- State	-nom	
Address  Employer's Name and Complete Addres	s		City			31216		
Name			Federal ID#			Phone #		
Address			City			State	Zip	
Type of business (Example: manufactur	ing, food service, constru	ction)			,		NAICS Number	
Type of Ownership: Private	]	State Government	Соц	unty Government		Loc	al Government	
Jpon filing this Notice of In Attorney General, a District natter relating to the notice.	jury, permission i Attorney or their	s given to the Adm designees to exam	inistrator of t Ine all record	the Workers' ( s relating to t	Compensa the notice,	tion Court, any matter	the insurance C contained in th	commissioner, the le notice, and any
Any person receiving tempo employer or insurance carri employment status, occurrin	er anv change in	a material fact or ti	ne amount of	employer's in Income the e	surance c employee l	arrier shall s recelving	promptly report or any change	t in writing to the in the employee's
he undersigned hereby decomplete, to the best of his/h	lares under penale er knowledge. An	ly of perjury that he y person who comn	'she examined nits workers' (	d this notice a compensation	nd all state fraud, upo	ements con on convictio	tained herein are on, shall be gulit	true, correct and y of a felony.
hereby certify that this For Court and a copy thereof to	m 2 was sent to t	he Workers' Comp	ensation elow:					ON OF LIABILITY
Signed	•			the Employer	r's Worker: asonable t	s' Compens ime thereaf	ation insurance ter, of learning t	Carrier within 10   hat an employee
	Signature of Prepar	er		the shift, or	requires r	nedical atte	ention away from	ost time beyond n the work site,
Name a	nd Title of Preparer (f	Please Print)		fatal or other	rwise. For	n 2s filed v	vith the Workers	s' Compensation Isclosure except
elephone Number	Area Cada and Num			as authorized			- <del>-</del>	•

Rev. 10/10

Date\_\_

Area Code and Number

IN THE DISTRICT COUR	DISTRICT COURT  RT OF TULSA COUNTY
STATE OF O	KLAHOMA MAY - 9 2014
SONYA D. LANGE,	
Plaintiff,	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULGA COUNTY
vs.	Case No. CJ-2014-357
JOHN ZINK CO., LLC,	Judge Daman Cantrell
Defendant. )	

### ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW ITS MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON METLIFE

Before the Court is Defendant John Zink Co., LLC's Motion to Withdraw Motion to Quash Subpoena Duces Tecum Served Upon MetLife, filed herein on April 28, 2014.

THE COURT FINDS that the Motion to Withdraw is GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT, that Defendant's Motion to Quash Subpoena Duces Tecum served upon MetLife, filed herein on April 28, 2014, be WITHDRAWN without prejudice to the claims or defenses of the parties in Case No. CJ-2014-357.

IT IS SO ORDERED THIS

PREPARED BY:

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212 DOERNER SAUNDERS DANIEL & ANDERSON, LLP Williams Center Tower II Two West Second Street, Suite 700 Tulsa, Oklahoma 74103 Telephone: (918) 582-1211

Facsimile:

(918) 591-5360

ATTORNEYS FOR DEFENDANT

### **CERTIFICATE OF SERVICE**

and c	The undersigned hereby ce orrect copy of the above and t	ertifies that on the <u>911</u> day of <u>May</u> 2014, a true foregoing instrument was:
	mailed with 1	postage prepaid thereon;
	mailed by ce	rtified mail, Return Receipt requested;
	transmitted v	via facsimile;
	hand-deliver	ed; or
	issued for per	rsonal service
to:		
	Tim Gilpin Gilpin Law Office 1874 S. Boulder Ave. Tulsa, OK 74119 Attorney for Plaintiff	
٠	MetLife c/o The Corporation Compa 1833 S. Morgan Road Oklahoma City, OK 73128	
		Kristen L. Brightmire

3049203**v**1

	COURT OF TULSA COUNTY OF OKLAHOMA	FILED  MAY - 9 2014
SONYA D. LANGE,	)	MAT - 3 2014
Plaintiff,	) )	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
·vs.	) Case No. CJ-2014-357 ) Judge Daman Cantrell	
JOHN ZINK CO., LLC,	)	
Defendant.	) ·	

ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW ITS MOTION TO QUASH SUBPOENA DUCES TECUM SERVED UPON BROADSPIRE MANAGEMENT SERVICES, INC.

Before the Court is Defendant John Zink Co., LLC's Motion to Withdraw Motion to Ouash Subpoena Duces Tecum Served Upon Broadspire Management Services, Inc., filed herein on April 28, 2014.

THE COURT FINDS that the Motion to Withdraw is GRANTED.

- IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT, that Defendant's Motion to Quash Subpoena Duces Tecum served upon Broadspire Management Services, Inc., filed herein on April 28, 2014, be WITHDRAWN without prejudice to the claims or defenses of the parties in Case No. CJ-2014-357.

IT IS SO ORDERED THIS ? - day of May, 2014.

JUDGE OF THE DISTRICT COURT

PREPARED BY:

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212 DOERNER SAUNDERS DANIEL & ANDERSON, LLP Williams Center Tower II Two West Second Street, Suite 700 Tulsa, Oklahoma 74103

Telephone:

(918) 582-1211 Facsimile: (918) 591-5360

ATTORNEYS FOR DEFENDANT

DICTOTOM COTTOM

### **CERTIFICATE OF SERVICE**

and c	The undersigned hereby certifies that on correct copy of the above and foregoing instru	the 94 day of May 2014, a true ument was:
	mailed with postage prepaid	thereon;
r.	mailed by certified mail, Re	turn Receipt requested;
	transmitted via facsimile;	•
	hand-delivered; or	
	issued for personal service	
to:		
	Tim Gilpin Gilpin Law Office 1874 S. Boulder Ave. Tulsa, OK 74119 Attorney for Plaintiff  Broadspire Management Services, Inc., c/o The Corporation Company 1833 S. Morgan Road Oklahoma City, OK 73128	Kristen L. Brightmire

3048647v1

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MAV 1 9 2044

	STATE OF OKLAHOMA	WAL 1 3 ZU14
SONYA D. LANGE, Plaintiff,	)	SALLY HOWE SMITH, COURT CLERI STATE OF OKLA, TULSA COUNTY
vs.	) Case No. CJ – 2014 – 00 ) Judge Daman Canti	
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	) ) )	<b>3.</b>
Defenda	nt. )	

### **RESPONSE IN OPPOSITION** AMENDED MOTION TO QUASH SUBPOENA DUCES TECUM ON OLD REPUBLIC INSURANCE COMPANY

### I. Introduction

COMES NOW the Plaintiff, Sonya D. Lange ("Lange"), and Responds in Opposition to Defendant's, John Zink Co., LLC ("Zink") Amended Motion to Quash Subpoena Duces Tecum. The Subpoena sought witness contact information from Zink's workers' compensation carrier, Old Republic Insurance Company, (Exhibit "A"), in this Workers' Compensation wrongful discharge case. Currently, the dispute only concerns the discovery of Zink employee Oklahoma Workers' Compensation Form 2s. ("Employer's First Notice of Injury"). Form 2s have been previously ordered discovered in The Fourteenth Judicial District and are relevant to the employer's patterns of behavior to similarly situated employees.

Persons identified in the Form 2s are potentially the most relevant, important and credible witnesses in this wrongful discharge case. The Form 2s will identify potential witnesses who experienced circumstances similar to Lange in the same work environment. Further, an agreed Protective Order in on file to protect third party information.

After being employed by Zink for about three and a half (3½) years, Zink fired Lange after she reported a work injury, hired an attorney, made a claim and Zink had denied several, but not all, of the claimed injured body parts in the Workers' Compensation Court. (Exhibit "B") Lange was fired while litigating the Workers' Compensation denials, as she was receiving medical care and off work on a physician's work release. (Zink Email, Exhibit "C"). Lange was wrongfully terminated: 1) because she pursued her rights and a claim under state Workers' Compensation Act; and, 2) she was fired while temporarily totally disabled (off work under physician's orders), due solely to absence from work. 85 O.S. §341(A) & (B).

### A. CV 21 Violated - Motion To Quash should be Denied

Local Rule CV 21 provides in part:

"The Court will refuse to hear or set <u>any discovery dispute</u> unless counsel for the movant advises the Court in the motion that the lawyers have conferred either in person or by telephone in good faith about the dispute ..."

(emphasis added)

Counsel for Zink did <u>not</u> confer with Lange's counsel, by telephone or in person, prior to filing the Motion to Quash discovery in the form of the Subpoena Duces Tecum. As such, Zink's Motion to Quash should be not be set or heard and should be Denied. Subsequent to the Motions to Quash being filed, Zink <u>withdrew</u> its Motions to Quash Subpoenas Duces Tecum upon MetLife and Broadspire and amended its Motions to Quash related to Crawford & Company and Old Republic Insurance Company and limit the dispute to the discovery of Workers' Compensation Form 2s, "Employer's First Notice of Injury".

#### B. Standard

The Oklahoma Discovery Code was written and is interpreted to allow liberal discovery of information and documents that go to the allegations in a case and defenses thereto *or could lead to* evidence admissible at trial, 12 O.S. §3226(B)(1)(a):

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (emphasis added)

A Subpoena seeking relevant evidence has a tendency to make the existence of facts of consequence to the determination of this action more or less probable than they would have been without the evidence. 12 O.S. §2401. Witnesses that worked for the same employer, during the same general time frame as Lange and who also reported work injury are relevant to discovery and/or could lead to admissible trial evidence. The experience of similarly situated Zink employees goes directly to proving a pattern of behavior of this employer toward its employees who also reported a work injury.

### C. Confidentiality - Witnesses

An Agreed Protective Order is in place to protect "identification information" and "other types of sensitive information" that may pertain to Form 2 information on third parties/witnesses. (Exhibit "D"). Zink objected to the discovery of its Form 2s on the basis of confidentiality. 85 O.S. §322. In fact, these records are not confidential to the employer/Defendant and the reporting employee. The records were made "confidential"

to *prohibit solicitation of legal cases* by third parties/attorneys from injured workers. No such solicitation will or can take place here as per the Agreed Protective Order.

In addition, other Courts in the Fourteenth Judicial District have ordered the production of Workers' Compensation Form 2s, "Employers First Notice of Injury", in an identical Workers' Compensation wrongful discharge case, see Order attached as Exhibit "E". In an abundance of caution, those parties' names and identifying information are "blacked out" as per previous resolution between them. But, it will be supplied to the Court upon order or request.

The sought after discovery seeks the identity of, and/or will lead to, persons with knowledge of the events in our case (witnesses) and/or individuals who experienced similar circumstances in the same work place during the same general time period. The identity of potential witnesses is not confidential or privileged.

"The identity and location of persons having knowledge of matters pertaining to an action are not privileged, except in the possible instance of informers."

FDIC v. St. Paul Fire & Marine Insur. Co., 53 F.R.D. 260 (W.D. Okla.1971)

#### II. Arguments & Authorities

### A. What Subpoena Sought

Each of Lange's Subpoenas Duces Tecum sought information on:

- a. Lange's own underlying workers' compensation claim; and,
- Other Zink employees who filed workers' compensation claims in Oklahoma during Lange's employment tenure and shortly thereafter.

### B. Circumstantial Evidence & Patterns of Behavior Relevant & Discoverable

Persons identified in Zink's Workers' Compensation Form 2s are potentially the most relevant, important and credible witnesses in this wrongful discharge case. Lange is simply attempting to identify witnesses, while Zink is attempting to block discovery of witnesses and improperly limit the evidence to Lange alone.

Oklahoma authorities establish that <u>patterns of a defendant/employer's behavior</u> toward its employees are important, relevant and discoverable evidence in a retaliatory discharge case brought pursuant to 85 O.S. §341. At the very least, such evidence is clearly calculated to reasonably lead to admissible trial evidence. "Because employers seldom admit to any wrongdoing, the link between the employee's filing of a workers' compensation claim and his subsequent termination must usually be shown by circumstantial evidence". Mantha v. Liquid Carbonic Industries, Inc., 1992 OK CIV APP, ¶7, 839 P.2d 200. This evidence may take the form of <u>patterns of behavior by the Defendant/employer</u> such as:

- a. encouraging employees suffering work-related injuries to file health insurance claims instead of workers' compensation claims;
- b. supervisors getting mad when employees showed interest in filing a workers' compensation claim;
- c. employees worried about being fired if they filed workers' compensation claims;
- d. employees let go after filing a workers' compensation claim, over less qualified employees who had not filed a claim.

Wallace v. Halliburton Co., 1993 OK 24, ¶¶14, 15 & 16, 850 P.2d 1056

Oklahoma Courts have also found a plaintiff/employee's retaliatory discharge case lacking because "a pattern of termination of workers who filed claims, or of

pressure put on workers not to file claims" was not shown by the evidence. <u>Taylor v.</u>

<u>Cache Nursing Centers</u>, 1994 OK CIV APP 160, ¶¶14 & 15, 891 P.2d 607.

Patterns of Zink's behavior toward its employees is at issue, relevant and discoverable evidence in a retaliatory discharge case brought pursuant to 85 O.S. §341.

### B. Koch Industries - Lange Employee

Zink is an affiliated company of Koch Industries. Zink also objected to the Subpoena because in one part it was identified as "a/k/a Koch Industries". A plain reading of the Subpoena indicates it seeks information related to: 1) John Zink Company, LLC, 2) Its Oklahoma locations and, 3) covers an approximate three (3) year period. The addition of "a/k/a Koch Industries" is based upon information discovered that states Lange is "a Koch employee", see Zink document JZ000129: "EMPLOYEE PLEDGE". (Exhibit "F"). Other such discovered documents indicate Lange was a Koch employee and use the Koch symbol on her employee documents.

Lange's "a/k/a" was added out of caution because it is as yet unknown whether the Workers' Compensation Form 2s and/or workers' compensation coverage was held under the name of Zink or Koch.

#### III. Conclusion

Wherefore, premises considered, Plaintiff, Sonya D. Lange, pursuant to the authorities and arguments above, and CV 21, Responds in Opposition to Defendant's, John Zink Company, LLC, Motion to Quash Subpoenas Duces Tecum upon Old Republic Insurance Company and requests that the Motion to Quash be DENIED, the

Subpoena Duces Tecum discovery be Compelled and Plaintiff be granted her attorney fees and any costs associated with the Motion.

Respectfully Submitted,

Tim Gilpin, OBA #11844
GILPIN LAW OFFICE
1874 South Boulder
TULSA, OK 74119
(918) 583-8900 telephone
(918) 796-5724 fax
timgilpin@gilpinlaw.net
Attorney for Plaintiff, Sonya D. Lange

### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this \_/\_\_\_day of

, 2014.

Tim Gilpin

EXHIBIT "A"

### IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	· )
Plaintiff,	)
VS.	) Case No. CJ – 2014 – 00357
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	) Judge Daman Cantrell ) ) ) )
Defendant.	)

### SUBPOENA DUCES TECUM - CIVIL

TO: Old Republic Insurance Company., c/o
Prentice Hall Corporate System OK, Inc.
115 SW 89<sup>th</sup> Street
OKC, OK 73139

#### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8th day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

Oklahoma workers' compensation case of <u>Sonya D. Lange v. John Zink Co., LLC</u>, WCC # 2012-07091A (S. Lange DOB 6-19-69), specifically:

1. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's absence from work due to an alleged work injury. This request does not seek attorney/client communications; and,



- communications between you and John Zink, LLC, a/k/a Koch Industries, (its
  officers, managers, supervisors or authorized representative) related to
  Lange's temporary total disability (time off work to recover or healing period
  and period of restricted work duty that employer could not accommodate) due
  to an alleged work injury. This request does not seek attorney/client
  communications; and,
- 3. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's ability to return to work from an alleged work injury. This request does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.
- 6. Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

Issued this \_// day of \_\_\_\_

. 2014.

Respectfully Submitted,

Tim Gilpin, OBA #11844 GILPIN LAW OFFICE 1874 South Boulder TULSA, O K 74119 (918) 583-8900 telephone (918) 796-5724 fax timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, SENDER: COMPLETE THIS SECTION Two West Second S COMPLETE THIS SECTION ON DELIVERY Tulsa, OK 74103-3 2, and 3. Also complete ifem 4.if Pestricted Delivery is desired.

Print your name and address on the reverse so that we can return the card to you. on this 11 Attach this card to the back of the mallplece, or on the front if space permits. D. Is delivery address differ If YES, enter delivery ad Service Type Certified Mail ☐ Express Mall ☐ Registered Return Receipt for Merchandi Insured Mail □ 0.O.D. 4. Restricted Delivery? (Extra Fee) 7011 1570 0001 6739 1962 PS Form 8811, February 2004 Domestic Return Receipt PS Form 3800, August 102595-02-M-154

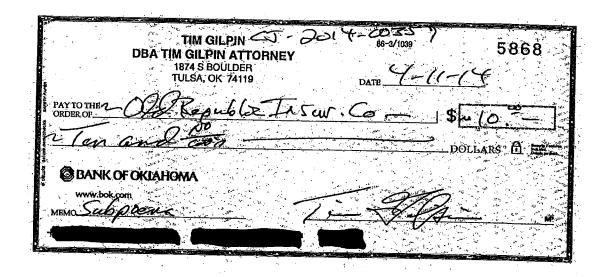


EXHIBIT "B"

FQHM 3	WUHKEHS CU			11 of 547	ленов содна	use rule
Send original and 4 copies to: Norkers' Compensation Court	1915 N OKLAHOMA (	ORTH STILES				ETOTA
Name of Claimant (Injured Employee)		e check approprie				更原
SUNYAD. LANGE	☑ 1. Ort	iglnat Filing			IIIM 20	
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NOTE: Mediation is available to address	EMPLC	YEE'S FIRST NOT	ICE OF ACCIDENTA	LINJURY AND C	LAIMFORE	DMPENSATION
NOTE: Mediation is available to address certain w For information, call (405) 522-8760 or in-State (Please type or print)	Toll Free (800) 522-	disputes. -B210.	WCC FILE NO.	2012-0	J7091	IA
EMPLOYEE NAME (Last, First, Middle):		Social Security	#:	I Ph	one:	
LANGE SOOYA						-6072
Malling Address (Include City, State & Zip): Leaker	N AZROW, OKI	106.12	Date of Birth:	Age:	Sex	
Occupation: Was your emp	loyment agreement in	· Avg. Weekly	6/19/69 Wage:	H2 Length of Emp		
STAFF ALCOUNTANT Oklahoma?	YES 10 NO LI	\$ 99,000.0	o Annesey.	years @ 3		onths@5
Date of Accident, or as applicable, Date of Terminat From Employment if a Cumulative Trauma Injury:	ion Injury resulted fro	m:	بد	Time Injury Oc		
RAUREURIS 9/1 / 10 Arrilax - Expring E 1  Dire parts of the body injured or affected	Single Incident	<del></del>	re Trauma 💭	VARIOUS	<u>_</u>	AM D PM
1 HAND RT. ELBONS RT. SHOULD	ER. Neck		I Injury: City/Coun			
What is the nature of the injury of kiness: Desc	ribeywith details how th	e injury occurred.	Include object or	substance, whic	h directly inj	uted you;
Have you filed a claim for Social Security Disability Insurements?	REPETITIVE	USE OF C.	ALEKLATUR	- 5 KEN B	ORCH	
YES D NO D	SO IIIOIIIIS O	the filing of this N	enelits or will you l olice of Accidental	recome eligible to Injury and Clain	u for Combe	: Benefits within nsation?
Are you a previously impaired person due to a prior wo be entitled to benefits for combined disabilities against filing a "Form 3F" with the Workers' Compensation Cour	rkers' compensation in the Multiple Injury True L	jury or obvious ar st Fund. A claim	nd apparent pre-ex against the Multip	disting disability? Trust	?I Fund may b	Il "YES", you may a commenced by
Treating Physician (full name): No NE SPECIFIE)。	Addres	s:	City:	<del></del>	State:	Zip:
Employer SONN LINK L.L.C. ANDI	be Lacy bereio	Employer's FE	I# (Federal ID Nu	mber):	Telephone	21
Complete Mailing Address: 920 EAST- APRINE	in flory fire or	X/20	City:			34-1800 Zip:
Complete Street Address (If different from above):		····	Telis A City:	0		74116
			. Oly:		State:	Zip:
Ar son receiving temporary disability benefits for employer or insurance carrier any change imployee's employment status, occurring during the any person who commits workers' compensation fra	period of receipt of	such benefits.	moome the emp	hell within sevi xoyee is recel	en (?) days i ving or any	report in writing change in the
Compensation its						
•	U,	pon filing this I empission is gi	Volice of Accidentation of the Admirator of the Accident of the Accid	n <b>tal I</b> njury And Inistrator of th	Claim For	Compensation,
lame of dalmant's attorney if represented: ype or Print Name of Attorney;	C	ourl, the Insur	rance Commissi designees to exa	ioner, the Atti	ornev Gene	ecal a District
1		atter contained	In the notice, ar	nd any matter :	relating to t	the notice. The
lalling. Address:	re	cords pursuant	ed to the above p to 76 O.S., §19,	including waiv	/er.ði:anv b	rivilece crented
PO Box 35346	b	y law concernir	ng communication in the communication is a second communication of the c	ons made to a	physician	or health care
ty State Tulsa OK	74153 B	y personal exam uthorization. N	nination. This fo othing shall be	orm is not inte	nded for us	se as a medical
elephone #: 918) 664-1113	E1	videntiary privile	ge recognized by	y law	1" (a) "d. K.	
	fo	o <b>r compensallo</b> n	enally of perjury : a and all stateme est of my knowle	nts contained i	herein are tr	olice and claim rue, correct and
Jack for Swant		igned this 14.4		$\wedge$	·	2012
	٧	Da	4.			reflering
Signature of Attorney for Claimant	7	Sig	<i>Transpill</i> nature <b>Ji</b> Claiman	t (must be sig		
	•		_			17

FORM 3	NKEHS' COMPENSATION 1915 NORTH STILES	<u>:</u>	SHAN SHALL FOR COMMITTEE O	Fuzzy &
Sand original and 4 copies to:  Workers' Compensation Court	KLAHOMA CITY, OK 7310	05-4918	FILECC	HY
Name of Claimant-(Injured-Employee)	Please check appropria	ate box	FEB 11 201	3
SONYP D. LANGE			,	
Name of Employer Josen ZINK, LLC	II. Amends Previously Fi	mendment is in i	WORKERS COMPENSATION	IN COURT
AND LOR KORN INDUSTRIES	<ul> <li>addition to, or subsition.)</li> </ul>	titute lor, prior i	TULSA	
Court Use Only				<u>-</u>
	EMPLOYEE'S FIRST NOT	ICE OF ACCIDENTAL	NJURY AND CLAIM FOR COMP	ENSATION
NOTE: Mediation is available to address certain workers' For information, call (405) \$22-8760 or in-State Toll Fro	compensation disputes. ee (800) 322-8210.	WCCFLENO.	Z-08091 A	
(Please type or print)				
EMPLOYEE NAME (Last, First, Middle):	Social Security	#:	Phone:	
LANCE SONYA D.	1		19/81 232-	6072
Malling Address (Include City, State & Zip);	. AU AMAIS	Date of Birth:	Age: Sex:	
2508 5.154 ST. Beixen Hees.			Length of Employment	MAKE
Oblahoma? VES E	NO D	5EH1	years3 month	s_6
STAFF RECOUNTANT CHARLES I Temporation In		NET-HARRY	Time Injury Occurred	
Dale of Accident, or as applicable, Date of Termination in Employment if a Cumulative Trauma injury:	In A terror of D		• •	AM D PM
		ive Trauma L.   of Injury: City/County		MA LI PM
re parts of the body injured or affected	ا ا د د د	а идиту: Опуссовну	<b>Joine</b>	
Mat is the nature of the injury or timess: Describe with	in details how the injury occurre	d. Include object or s	ubstance which directly injure	d you: L.
lave you fled a claim for Social Security Disability Justicance sene firs?	And you engine for Medicare 30 months of the flang of this	Banefits or will you be Notice of Accidental	come eligible for Medicare Be njury and Claim for Compense	delia Milpiu
/ES 🗆 NO 🖟	<u> </u>			
ve-you-a-previously impaired person due to a prior workers' one entitled to benefits for combined disabilities against the Mulifing a "Form 3F" with the Workers' Compensation Court.	ompensation injury or obvious a libple injury Trust Fund. A dai	and apparent-pre-ext m against the Multipl	sting-disability? If "I e Injury Trust Fund may be c	YES", you may commenced by
reating Physician (full name):	Áddress:	City:	Slate: Zi	p: .
mployer	Employer's F	Él v. (Federal IQ Nun	per): Telephone:	
omplële Malling Address:	and the second of the second o	··City:·	State: Zig	
Complete Street Address (if different from above):	***************************************	City:	State: Zig	of the second
			14 214 2	***
ison receiving temporary disability benefits from a page employer or insurance carrier any change in a mapping and a mapping and a mapping and a mapping during the period of the period	naterial lact or the amount of oil receipt of such benefits.	of Income the emp	nan wimin seven (/) days re loyee is receiving or any o	change in the
ny person who commits workers' compensation iraud, u				
	Upon filing this	s Notice of Accide	ntal injury And Claim For C inistrator of the Workers'	Compensation,
lame of dalmant's attorney it represented:	Court. the Ins	surance Commissi	oner, the Attorney Géner	al, a District
ype or Pful Name of Atlomey: OBA#	Attorney or the	ir designees to exa	mine all records relating to t	the notice, any
Jack 6. Zurawik 11588	permission ora	inted to the above p	nd any matter relating to the ersons authorizes them acco including waiver of any pri	ess to medical
will de Maras.	by law concer	mina communicali	ons mádé to a physician o	or health care
PO Box 35346	provider or kn	owledge obteined l	by such physician or health form is not inlanded for use	cats broatger
Tulsa 0K 743	53 authorization.	Rankhakick. This is Nothing shall be vilege recognized b	construed to waive, limit	or impair any
918) 664-1113	I declare unde	r penalty of perjury tion and all stateme	that I have examined this no ints contained herein are In	olice and ciain ve, correct and
One H. Routs	complete to the Signed this	e best of my knowl	edge and bellel. of <u>Fe bryary</u>	2013
The Duniell	× h	4 0		
Signature of Attorney for Claimant		Signature od Ialmai	it (must be signed by claimant	) 00/26/11
- · · · · · · · · · · · · · · · · · · ·	<u> </u>		•	

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

Send onginal to Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record

n re claim of:
Full Name of Injured Employee (Claimant) SONYA D. LANGE
Claimant's Social Security Number (LAST 4 DIGITS ONLY)
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC
Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE

THIS SPACE	FOR	COURT	USE	ONL	Y

n re claim of:		,		
Full Name of Inju		e (Clai	mant)	
Clalmant's Socia	1 Security Nu	mhac (	LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDE
XXX-XX-				WCC FILE NO. 2012-07091A
JOHN ZINK CO				Date of Injury . 09/01/2010
Employer's Insuranc Own Risk Group, Un	e Carrier, Penn insured OLI	it#for DREP	Court Approved Individual Self-Insured or UBLIC INSURANCE	
IOTH: Mediation 22-8210.	ı is available	to add	ress certain workers' compensation	disputes. For information, call (405) 522–8760 or In-State Toll Free (80
YES	NO	(Pl	ease type or Print)	·.
X		1.	Was claimant at the time of the all	eged injury, an employee of the above named respondent?
X		2,	Was claimant covered by the World	kers' Compensation Act?
X		3.	Did claimant sustain an accidental employment?	injury or suffer an occupational disease arising out of and in the course of the
x		4.	Has claiment filed a Form 3 within	the statutory period of time?
x	<del></del>	5.	Did respondent, at the time of the the carrier named in the caption at	alleged injury, have an own-risk permit or a compensation insurance policy with love?
X	<del></del>	6.	Did claimant timely notify responde	ent of the injury?
X	<del></del>	7.	Has claimant been provided medic	al treatment?
X	<del></del>	8.	Has respondent commenced paym	nent of temporary total disability payments to claimant?
			Temporary total disability has been total of wee	paid to claimant from 7/10/11 to 8/22/11 for a
<u> </u>		9,	Has respondent selected a treating The treating physician is Dr. Wai	physician? is (name of treating physician).
i L	(ALLI	DEPC	SITIONS OF MEDICAL EXPER	TS SHALL BE COMPLETED PRIOR TO TRIAL.)
X		10.	Is rate an Issue? Claimant's comp	ensation rate: TTD _594.41 PPD_323.00
State all affirma	ilive defense	s: Res	erve the right to add additional defe	nses upon completion of discovery; deny right elbowlshoulder, neck and left- ing date approx 8-1-12 & continuing; pre-existing condition; wage statement
				ing nate approx of the communing; pre-existing communing; wage statement.  I: All Claimant's witnesses; All previously endorsed witnesses; Dr. Gamett Wa
			sa Mautho: Dr. Kathleen Sisler Dr.	
			•	dously andorsed exhibits; Medical records of Or Alan Martin; wage statement
				_
				ingell 8/15/11; Dr. Gillock 10/4/12, 5/1/13; Dr. Chalkin 2/27/13; Dr. Sisler
Respondent her was malled, tog			copy of the medical report written b f this motion to Opposing party/Cou	
· L				WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
clare under pen	alty of perjud	ry tha	I have examined all statements	contained herein, and to the best of my knowledge and belief, they are tr on fraud, upon conviction; shall be guilty of a felony.
EREBY CERTIF	Y THAT A	COP	Y HAS BEEN SENT TO:	Signed this day of June
opposing Party ack G. Zurawik				Signature of Filing Party
ddress (Number of O. Box 35346	& Street)		·	Address (Number & Skeet) P. D. Box 1710
ity usa	Sta OK	te	Zip Code 74153-0346	City State Zip Code Tulsa OK 74101-1710
islan				

Print or type name of Altomey Jennifer A. Sloan

OBA# 19846

mah 1580-79 8/11

a. MAY. 6. 2013 3:43FM		NO. 1276 - 2			
SUPPLEMENTAL FORM 10 WORK	ŒRS' COMPENSATION COURT 1915 NORTH STILES	THIS SPACE FOR COURT USE ONLY			
Send original to OKLAHO Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record	MA CITY, OKLAHOMA 73105-4918				
In re claim of:					
Full Name of Injured Employee (Claimant) SONYA D. LANGE					
Chairmant's Social Security Number (LAST 4 DIGITS ON	NLY) ANSWER AND PRETRU	AL STIPULATION OFFERED BY RESPONDENT			
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury	2012-07091A			
Employer's Insurance Carrier, Permit # for Court Approved Individo Own Risk Group, Uninsured OLO REPUBLIC INSURANCE	4-10-14	Date of Injury 09/01/2010			
NOTE: Mediation is available to address certain worker 522-8210.	s' compensation disputes. For information, cal	! (405) 522–8760 or In–State Toll Free (800)			
YES NO (Please type or Print	)	,			
1. Was claimant at u	h <b>e time</b> of the alleged injury, an employee of the	Cinchesses barres avods			
2. Was claimant cover	ered by the Workers' Compensation Act?	and a semico seabolificall()			
3. Did clakmant susta employment? de	th an accidental injury or suffer an occupational enyright elbowishoulder, neck, left shoulder/am	disease arising out of and in the course of the			
4. Has dalmant filed	a Form 3 within the statutory period of time?	and a section both hands			
		permit or a compensation insurance policy with			
X 6. Did claimant timely	rollify respondent of the injury?				
7. Has claimant been provided medical treatment?					
· ·	mmenced payment of temporary total disability	Dayments to deimant?			
Temporary total dis	sability has been paid to claimant from 7/10/11 weeks in the total sum of \$	to _8/22/11for p			
9. Has respondent se	lected a treating physician?				
CALL DEPOSITIONS OF MED	DICAL EXPERTS SHALL BE COMPLETED				
10. Is rate an issue? C	Isimani's compensation rate: TTD _694.41	PPD_923.00			
State all affirmative defenses: Reserve the right to add shouldestarm/hand and fingers on both hands: claiman continuing; pre-existing condition; wage statement	edditional defenses upon completion of discour See which the validation of the spark point in the see at in	cry: deny right sibowishoulder, neck left.			
List the name of all witnesses who may be called by re	Spondent at triat: All Claimants witnessess All	The state of the s			
Karan Miller, Pruda Huddleston; Lisa Mautino; Dr. Kath	leen Sister Dr. Chelkin	nevously andorsed witnesses. Dr. Gamett Walts:			
3. List all exhibits to be introduced at trial: All Claimant's e	exhibits: All previously endorsed exhibits: Merlic	al tecomic of Dr. Alan Marie			
11. 19 aus 02 192 1. 10/22/11, 9/23/31, 10/19/11, 4/4/32, 4	/25/12; Dr. Pattingell 8/15/11; Dr. Gillock 10/4/1	2: Dr. Chakin 2/27/13: Dr. Sielar 12/6/12:			
was mailed, together with a copy of the medical	report written by <u>Or. Gillock</u> osing party/Counsel.	and dated 5/1/13			
(LIST ON A SEPARATE SHEET, A	ADDITIONAL WITNESSES, EXHIBITS AN	D MEDICAL EVIDENCE)			
declare under penalty of perjury that I have examined a percent and complete. Any person who commits worker	ll statements contained herein, and to the be s' compensation fraud, upon conviction, she	est of my knowledge and bellef, they are true,			
TEREBY CERTIFY THAT A COPY HAS BEEN SEN	TTO: Signed this O Signator of Filing Party	daypf May 2013			
Opposing Party Jack G. Zurawik	I X/YI/WAL	Sloan			
Address (Number & Street) P.O. Box 35346	Address (Number & Street P. O/ Box 1710				
City State Zip Code Tulsa OK 74153-0346	Tulsa	State Zip Gode 74101-1710			
h 1580-79	Telephone # of Filing Party (918) 382-1400				
	Print or type name of Attor Jennifer A. Stoan	ney OBA# 18846			

mah 1580-79 8/11

No.
SUPPLEMENTAL
EORM 40
RESERVED TO THE RESERVED

## WORKERS' COMPENSATION COURT

WORKERS' COMPENSATION COURT 1915 NORTH STILES KLAHOMA CITY, OKLAHOMA 73105-4918	THIS SPACE FOR COURT USE, ONLY

Send original to OKLAH Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attomey of Record	IOMA CITY, OKLAHOMA 73105-4918
In re claim of:	
Full Name of Injured Employee (Claimant) SONYA D. LANGE:	
Claimant's Social Security Number (LAST 4 DIGITS	ONLY)  ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT
XXX-XX-	WCC FILE NO.
Name of Employer (Respondent)	2012-07091A
JOHN ZINK COMPANY, LLC	Date of Injury
Employer's Insurance Cerrier, Permit # for Court Approved Ind Own Risk Group, Uninsured OLD REPUBLIC INSURAN	Widusi Selfinsured or USE 09/01/2010
NOTE: Mediation is available to address certain w (800) 522-8210.	orkers' compensation disputes. For information, call (405) 522-8760 or In-State Toll Free
YES NO (Please type or Pr	int)
X1. Was dalmant a	at the time of the alleged injury, an employee of the above named respondent?
X 2. Was claimant o	covered by the Workers' Compensation Act?
	stain an accidental knjury or suffer an occupational disease adsing out of and in the course of the
X 4. Has daimant file	ed a Form 3 within the statutory period of time?
5. Dld respondent the carrier name	at the time of the alleged injury, have an own-risk permit or a compensation insurance policy with
6. Did claimant tim	rely notify respondent of the injury?
	en provided medical treatment?
	commenced payment of temporary total disability payments to claimant?
Temporary total total of	disability has been paid to claimant from 7/10/11 to 8/22/11 for a
	selected a treating physician? sician is Or. Watts (name of treating physician)
(ALL DEPOSITIONS OF M	EDICAL EXPERTS SHALL BE COMPLETED PRIOR TO TRIAL.)
	Claimant's compensation rate: TTD _594.41 PPD_323.00 utd additional defenses upon completion of discovery; deny right elbow/shoulder, neck_left
and fingers on both hands; claimant is receiving sho	od-term disability of \$491/week, heginning date of approximately 8-1-12 thus continuing: pre-existing.
12. List the name of all witnesses who may be called by	respondent at trial: All Claimant's witnesses; All previously endorsed witnesses; Dr. Garrett Watts;
CARREL MILLER PRODUCTION LISA MAURIOO: Dr. Ka	atbleen Sislec Dr. Chalkin
13. List all exhibits to be introduced at trial: All Claimant	s exhibits; All previously endorsed exhibits; Medical records of Dr. Alan Madin; wage statement;
THE WARES OCCUPANTS, NYZZZZZZ 1972 1/11 10/19/11 A/A/12	.4/25/12; Dr. Pelfingell 8/15/11; Dr. Gillock 10/4/12: Dr. Chalkto 2/27/13:
14. Respondent nereby certifies that a copy of the medic was malled, together with a copy of this motion to Op	cal report written by Dr. Sister and dated 12/6/12 and dated 12/6/12
(UST ON A SEPARATE SHEET	ADDITIONAL WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
declare under penalty of perjury that I have examined correct and complete. Any person who commits work	i all statements contained herein, and to the best of my knowledge and belief, they are true, sers' compensation fraud, upon conviction, shall be guilty of a felony.
HEREBY CERTIFY THAT A COPY HAS BEEN SE	ENTITO: Signal this
Opposing Party Jack G. Zurawik	
Address (Number & Street)	P.O. Box 1710
City State Zip Code Tursa OK 74153-0346.	Tulsa OK 74101-1710
e 1580-79 /11	Telephone of of Filing Party (918) 382-1400
/11	Print or type name of Attorney OBA# Jennifer A. Stoan 19846

THIS SPACE FOR COURT USE ONLY

STEPLEMENTAL	
FORM TU	

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

Send original to Workers' Compe	nsation Court a	nd 1 copy to	(LAHOMA 73105-4918		
Claimant or the C	Jaimant's Atton	ney of Record			
in re claim of: Full Name of In	lumd Employee	/Disharan	٦		
SONYA D. LAN	IGE Inten Employee	(Claimant)		• • • • • • • • • • • • • • • • • • • •	
Claimant's Soc	lal Security Nur	nber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIA	AL STIPULATION OFFERED	BY RESPONDEN
XXX-XX-			WGC FILE NO.	2042 07004 4	
Name of Emplo JOHN ZINK CO	tyer (Responde DMPANY, LLC	nt)	Date of Injury	2012-07091A	
Employer's Insurar Own Risk Group, L	nce Center, Permi Uninsured OLD	t#for Court Approved Individual Self-Insured o REPUBLIC INSURANCE	<u> </u>	09/01/2010	
NOTE: Mediation (800) 522-8210.	on is available	to address certain workers' compens	ntion disputes. For information	n, call (405) 522-8760 or In-	State Toll Free
YES	NO	(Please type or Print)			
x_·	· .	1. Was claimant at the time of the a	lleged injury, an employee of the	above named respondent?	
x		2. Was dalmant covered by the Wo		•	
X	<del></del>	Did claimant sustain an accidental employment?	l injury or suffer an occupational	disease arising out of and in t	he course of the
X		4. Has claimant filed a Form 3 within			
X		5. Did respondent, at the time of the the carrier named in the caption a		permit or a compensation insc	urance policy with
<u> </u>	<del></del> .·	6. Did claimant timely notify respond			
X	· · · · ·	7. Has claimant been provided medi	cal treatment?		
X	<del></del>	8. Has respondent commenced pays			
		Temporary total disability has bee total of we	n paid to claimant from 7/10/11 eks in the total sum of \$	to_8/22/11	fora
X		Has respondent selected a treating.     The treating physician is Dr. Wa	g physician?	(name of treating pi	in relation 1
<u> </u>	(ALL D	EPOSITIONS OF MEDICAL EXPE	RTS SHALL BE COMPLETED	PRIOR TO TRIAL.)	lystcion).
<u> </u>		10. Is rate an issue? Claimant's come	pensation rate: TTD <u>594.41</u>	PPD_323.00	
<ol> <li>State all affirm claimant is</li> </ol>	aliye defenses	Reserve the right to add additional defe	enses upon completion of discove	ery; deny right elbow, right sh	nulder neck:
•	_	of \$491/week, beginning date of approx			
2. List the name of Dr. Chalkin (by	of all winesses pt)	who may be called by respondent at iti	al: Ali Claimant's witnesses; Ali p	riviously endorsed witnesses	: Dr. Garrelt Watts:
•		n: Lisa Mautino: Dr. Kathleen Sisler		<u> </u>	
). List all exhibits	to be introduce	ed at trial: All Claimant's exhibits: All pre	viously endorsed exhibits; Medic	al records of Dr. Alan Martin;	wage statement:
Dr. Walts B/19/	11, 8/22/11, 9/	21/11,10/19/11, 4/4/12, 4/25/12: Dr. Pet	tingell 8/15/11: Dr. Gillock 10/4/1		
Respondent he was malled, tog	reby certifies the	nat a copy of the medical report written to ppy of this motion to Opposing party/Co	by Dr. Sister	and dated 12/6/12	<i></i>
		SEPARATE SHEET, ADDITIONAL		D MEDICAL EVIDENCE)	
leclare under pen errect and comple		that I have examined all statements on who commits workers' compensation			slief, they are true,
		KOPY HAS BEEN SENT TO:	Signed this Signature of Filing Party	dayof March	2013
Opposing Party Jack G. Zurawik		2 7 7 7 7 7 7 7 7 7 7		Stoar	
Address (Number		<del></del>	Address (Number & Street P. O. Box 1710	0	
P.O. Box 35346 City	State	Zho Code	Stry Tulsa	State Zip Code OK 74	101-1710
Tuisa	OK	Zlo Code 74153-0346	Telephone # of Filing Party (918) 382-1400	,	
4 500 70		•	(310) 302-1400		1

Print or type name of Attorney Jennifer A. Sloan

jte 1580-79 8/11

SUPPLEMENTAL FORM 10

### MODVEDS COMPENSATION OCCUP

Send original to Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record

WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918	THIS SPACE FOR COURT USE ONLY
ANCIALED AND DESCRIPTION	· management of the control of the c

In re claim of: Full Name of Injured Employee (Claimant) SONYA D. LANGE Claimant's Social Security Number (LAST 4 DIGITS ONLY)... Name of Employer (Respondent)
JOHN ZINK COMPANY, LLC Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE

ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT WCC FILE NO. 2012-07091A Date of Injury 09/01/2010

NOTH: Mediation is available to address certain workers' compensation disputes. Por information, call (405) 522-8760 or In-State Toll Free (800)

	YES	NO	/Diamon Auron - D. F. II	•	·
	· v		(Please type or Print)		
			. Was claimant at the time o	of the alleged injury, an employee of the above named	respondent?
	v			the Workers' Compensation Act?	•
-	· · · · ·	• • • •	<ol> <li>Did claimant sustain an accemployment?</li> </ol>	cidental injury or suffer an occupational disease arisin	g out of and in the course of the
٠.	X	<del></del>	4. Has claimant filed a Form	3 within the statutory period of time?	. :
	<u> </u>	4.:		of the alleged injury, have an own-risk permit or a co ption above?	mpensation insurance policy with
-	×	<del></del>	6. Did claimant timely notify re	espondent of the Injury?	* 12. 20. 20. 20. 20. 20. 20. 20. 20. 20. 2
_	X:		7. Has claimant been provided		
-	x			ed payment of temporary total disability payments to c	laimant?
			Temporary total disability had total of		8/22/11 for a
_	x		Has respondent selected a     The treating physician is	treating physician?	
		(ALL	DEPOSITIONS OF MEDICAL E	EXPERTS SHALL BE COMPLETED PRIOR TO	ne of treating physician)
		x	•	s compensation rate: TTD _594.41 PPD_	
12.	receiving short- List the name o Karan Millar; Pa	lem disabilit Fall witnesse ula Huddlest	by of \$491Amek, beginning date of a es who may be called by responden ton: Lisa Mauttno; Dr. Keibleen Sist	al detenses upon completion of discovery; deny right approximately 8-1-12 thru continuing; pre-existing continuing conti	dition; wage statement used witnesses; Or Gamett Watts;
٠. ا	LIST BIT CATIONS I	n ne kitlodik	ced at trial: All Claimant's exhibits:	All praviously endorsed exhibits; Medical records of t	Dr. Alan Martin: wage statement:
•	A TANADA	1, 0/22/11, H	8/23/11,10/19/11,4/4/12,4/25/12; D	Or Peltingell 8/15/11: Dr. Gillock 10/4/12:	
4. I	Respondent her vas malled, tog	eby certifies ther with a c	that a copy of the medical report wi copy of this motion to Opposing par	ritten by <u>Dr. Sieler</u> and dated ty/Counsel. and dated	
		(LIST ON A	SEPARATE SHEET, ADDITIO	DNAL WITNESSES, EXHIBITS AND MEDICAL	EVIDENCE)
decla orrec	are under pena et and complet	ity of perjur e. Any pers	ry that I have examined all statem con who commits workers' compe	nents contained herein, and to the best of my kno ensation fraud, upon conviction, shall be guilty o	wledge and belief, they are true,
HER	EBY CERTIF	Y THAT A	COPY HAS BEEN SENT TO:	Signed this 7 day of Janu	arv 2042
Opp	osing Party			Signature of Filling Party	da HAI.
Add	ress (Number & Box 35346	Street)		Address (Number & Street) NO NAME P. O Box 1710	, MCK G ZUE
City Tuis	a	State OK	e Zip Code 74153-0346	City State Tulsa OK	Zip Code 74101-1710
h 1	580-79			Telephone # of Filing Party (918) 382-1400	
			•	Print or type name of Attorney Jennifer A. Sloan	OBA#

SUPPLEMENTAL FORM 10

			PENSATION COURT	THE STACEFOR COURTUSE ONLY
	Send original to Workers' Compensation Con Claimant or the Claimant's A	OKLAHOMA CITY, O	RTH STILES PKLAHOMA 73105-4918	
	In re claim of:	•		4 4 5 6 8
	Full Name of Injured Empk SONYA D. LANGE	yee (Claimant)	1 1,4121	
	Claimant's Social Security	Number (LAST-4 DIGITS ONLY)	ANSWER AND PRETRIAL WCC FILE NO.	STIPULATION OFFERED BY RESPONDEN
•	Name of Employer (Respo	ndent)		012-07091A
	JOHN ZINK COMPANY, L	LC	Date of Injury	
.	Employer's Insurance Carrier, P. Own Risk Group, Uninsured (	emit # for Court Approved Individual Self-Insured of DLD REPUBLIC INSURANCE	09	9/01/2010
. !	NOTH: Mediation is availab 522–8210.	le to address certain workers' compensatio	n disputes. For information, call (4	05) 622–8760 or In-State Toll Free (800)
	YES NO	(Please type or Print)		<b>.</b>
	X	•	illaged fahre an and the same	
	X	2. Was claimant covered by the Wo	illeged injury, an employee of the abouters' Company and a 200	ove named respondent?
	X	3. Did claimant sustain an accidenta	al injury or suffer an occumational die	ease arising out of and in the course of the
	x			ease arong out or and in the course of the
•			the statutory period of time?	en e
•	and the second of the second o	the carrier hamed in the caption a	anegeo injury, have an own-risk per bove?	mit or a compensation insurance policy with
		6. Did claimant timely notify respond	lent of the injury?	•
•		7. Has claimant been provided medi		•
		8. Has respondent commenced payr	ment of temporary total disability pay	ments to claimani?
		Temporary total disability has bee total of wee	n paid to claimant from 7/10/11 eks in the total sum of \$	to <u>8/22/11</u> for a
-		9. Has respondent selected a treating	g physician?	
	<u>(All</u>	DEPOSITIONS OF MEDICAL EXPER	RTS SHALL BE COMPLETED P	(name of treating physician)
·/ -	X	10. Is rate an issue? Claimant's comp		
11.	State all affirmative defense	s: Reserve the right to add additional defe	OSES 11000 completion of discourse	PPD_323.00
	receivino short-term disabili	V of \$491 hardy hardeness data as	The state of the s	in the state of th
12.	List the name of all witness	y of \$491.week, baginning date of approxi	malely 6-1-12 thru continuing: pre-e	xisting condition; wage statement
	Karen Miller: Paula Huddles	ion; Lisa Maulino; Dr. Kathlenn Sisler	II: All Claimant's witnesses; All previ	ously endorsed witnesses; Dr. Garrett Walts:
13.	List all exhibits to be introdu	ced at trial: All Claimant's exhibits: All prev	dolich andomed out the second	erords of Dr. Alan Martin; wage statement;
		**************************************	Innell 8/15/11: Dr. Gillock 40445.	erords of Or Alan Martin; wage statement;
. 14.	Respondent hereby certifies was mailed, together with a	that a copy of the medical report written b copy of this motion to Opposing party/Cou	y Dr. Sisler	and dated _12/6/12
-	LISTONA	SEPARATE SHEET, ADDITIONAL 1	WITNESSES EXHIBITE AND N	IEDICAL EVIDENCE
l dec	tare under penalty of perju ect and complete. Any pers	y that I have examined all statements c on who commits workers' compensation	ontained herein, and to the best on fraud, upon conviction, shall b	of my knowledge and belief, they are true, e guilty of a felony:
THE	REBY CERTIFY THAT A	COPY HAS BEEN SENT TO:	Signed this // day	of January 2013
Op Jac	posing Party Ir G. Zurawik		Signature of Filing Party	Star MAL.
Adk P.C	dress (Number & Street) ). Box 35346		Address (Number & Street) :	JACKG SUFFMAN
City		2 Zlp Code 74153-0346	City State Tulsa State	
-			Telephone # of Filing Party (918) 382-1400	(4101-1710
8/11	1580-79	•	Print or type name of Attorney Jennifer A. Sloan	OBA#
			L sommer AL Oldan	19846

	S' COMPENSATION COURT THIS SPACE FOR C	COURT USE ONLY
	15 NORTH STILES CITY, OKLAHOMA 73105-4918	,
In re claim of:		
Full Name of Injured Employee (Claimant) SONYA D. LANGE		******
Claimant's Social Security Number (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERE	D BY RESPONDEN
XXX-XX-	WCC FILE NO.	WEGLOWDEN
Name of Employer (Respondent)	2012-07091A	F .
JOHN ZINK COMPANY, LLC	Date of Injury	
Employer's Insurance Canter, Permit # for Court Approved Individual St Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	09/01/2010 09/01/2010	

	(LO	NO	(raease type or Print)	
	X		<ol> <li>Was claimant at the time of the alleged injury, an employee of the above named respondent?</li> </ol>	
	X		2. Wes claimant covered by the Workers' Compensation Act?	
	x	•	<ol> <li>Did dafmant sustain an accidental injury or suffer an occupational disease arising out of and in the course of the employment? * ADMIT RIGHT HAND ONLY</li> </ol>	
	X		4. Has dalmant filed a Form 3 within the statutory period of time?	
	x		5. Did respondent, at the time of the stieged injury, have an own-risk permit or a compensation insurance policy with the carrier named in the caption above?	h
	X		6. Did daimant timely notify respondent of the injury?	
-	X		/. Has dalmant been provided medical treatment?	
-	X		Has respondent commenced payment of temporary total disability payments to claimant?	
			Temporary total disability has been paid to claimant from 7/10/11 to 8/22/11 for a lotal of weeks in the total sum of \$	
-	X		Has respondent selected a treating physician? The treating physician is Dr. Watts (page of treating physician)	
		(ALL D	POSITIONS OF MEDICAL EXPERTS SHALL BE COMPLETED PRIOR TO TRIAL.)	_
11.	State all affin	itative defenses:	Is rate an Issue? Claimant's compensation rate; TTD <u>594.41</u> PPD 323.00  Reserve the dight to add additional defenses upon completion of discovery; deny right ethow dight shoulder, neck;	
				_
	List the name	of all witnesses	\$491Aveek_beginning date of approximately 8-1-12 thru continuing: pre-existing condition; wage statement	
•	Keren Miler: F	Paula Huddleston	tho may be called by respondent at tital: All Clalmant's wilnesses: All previously endorsed witnesses: Dr. Garrett Watt	s:
13.				
	Dr. Walls 8/19	V11. 8/22/11. 9/2	at trial: All Claimani's exhibits: All previously endorsed exhibits: Medical records of Dr. Alan Martin; wage statement: /11,10/19/11,4/4/12,4/25/12; Dr. Pettingell 8/15/11;	
14.	Respondent h	ereby certifies th	a converte modes mand with it. D. Only	
	was mailed, to	gether with a co	a copy of the medical report written by Dr. Gillock and dated 10/4/12	
		(LIST ON A S	PARATE SHEET, ADDITIONAL WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)	
l dec com	elare under per ectand compli	naity of perjury ete. Any persor	hat I have examined all statements contained herein, and to the best of my knowledge and belief, they are true who commits workers' compensation fraud, upon conviction, shall be guilty of a felony.	e,
HE	REBY CERTI	FY THAT A C	PY HAS BEEN SENT TO: Signed this Oppy of October 2012	
Or Ja	posłng Party ck G. Zurawik	•	Signature of Filing Party	
_	dress (Number ). Box 35346	& Street)	Address (Nimber & Street)	:
Çit Tu	y sa	State OK	Zip Code	
e.18 V11	580-79	•	Telephone # of Filing Party (918) 382-1400	
		•	Print or type name of Atlomey OBA# Jennifer A. Stoan 19846	

SUPPLEMENTAL
FORM OF

### WORKERS' COMPENSATION COURT

SUPPLEMENTAL FORM 10 WORKERS' COMPENS 1915 NORTH:	• • • • • • • • • • • • • • • • • • • •
Send original to OKLAHOMA CITY, OKLAI Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record	- · · · · · · · · · · · · · · · · · · ·
In re claim of:	
Full Name of Injured Employee (Claimant) SONYA D. LANGE	
Claimant's Social Security Number (LAST 4 DIGITS ONLY)	WCC FILE NO.
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	2012-07091A  Date of Injury
Employer's Insurance Center, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	09/01/2010
NOTE: Mediation is available to address certain workers' compensation dis	putes. For information, call (405) 522–8760 or In-State Toll Free (800)
YES NO (Please type or Print)	
X1. Was claimant at the time of the allege	d injury, an employee of the above named respondent?
X 2. Was claimant covered by the Workers	•
X	uy or suffer an occupational disease arising out of and in the course of the ID ONLY
X4. Has claimant filed a Form 3 within the	
X	ged Injury, have an own-risk permit or a compensation insurance policy with
X6. Did claimant timely notify respondent	of the injury?
X7. Has claimant been provided medical t	reatment?
	t of temporary total disability payments to claimant?
Temporary total disability has been pa total of weeks	id to claimant from 7/10/11 to _B/22/11 for a in the total sum of \$
Y 9. Has respondent selected a treating ph The treating physician is Dr. Warter	(name of treation obveicion)
(ALL DEPOSITIONS OF MEDICAL EXPERTS	•
10. Is rate an Issue? Claimant's compens     State all affirmative defenses: Reserve the right to add additional defense delmant is	s upon completion of discovery; deny right elbow, right shoulder, neck;
receiving short-term disability of \$491 (week, beginning date of approxima	
<ol> <li>List the name of all witnesses who may be called by respondent at trial: A Karen Miller, Paula Huddleston: Lisa Mautino.</li> </ol>	il Claimant's witnesses: All previously endorsed witnesses: Dr. Garrett Watts:
List all exhibits to be introduced at trial: All Claimant's exhibits; All previous	isty and resed a white: Marting monde of Dr. Alan Martin was a Life of
Dr. Walts 8/19/11, 8/22/11, 9/21/11, 10/19/11, 4/4/12, 4/25/12; Dr. Petting	
<ol> <li>Respondent hereby certifies that a copy of the medical report written by D was mailed, together with a copy of this motion to Opposing party/Counse</li> </ol>	•
(LIST ON A SEPARATE SHEET, ADDITIONAL WI	
declare under penalty of perjury that I have examined all statements con orrect and complete. Any person who commits workers' compensation	tained herein, and to the best of my knowledge and belief, they are true, fraud, upon conviption, shall be guilty of a felony.
	Signed titls day of October 2012 Signature of Filing Sarty
Opposing Party Jack G. Zurawik	Address Number & Street)
Address (Number & Street) P.O. Box 35345	P. Ø. Box 1719  CR State Zip Code
City Slate Zio Code Tulsa OK 74153-0346	Tulsa OK 74101-1710
ah 1580-79	Telephone # of Filing Party (918) 382-1400
111	Print or type name of Attorney OBA# Jennifer A. Stoan 19846

mah 1580-79 8/11

SUPPLEMENT!	I
FORM 10	

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

full Name of Inju ONYA D. LANG		ee (Claimant)	
Claimant's Soci	al Security N	lumber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDE WCC FILE NO.
Vame of Employ IOHN ZINK CO	MPANY, LLO	dent) C milt#for Court Approved Individual Self-Insured or	2012-07091A  Date of Injury  09/01/2010
wn Risk Group. U TE: Mediat	ion is ava	LD REPUBLIC INSURANCE	compensation disputes. For information, call (405) 522-87
YES	NO	(Please type or Print)	
X		1. Was claimant at the time of the alle	eged Injury, an employee of the above named respondent?
X	<del></del>	2. Was claimant covered by the Work	ers' Compensation Act?
x	<del></del>	<ol> <li>Did claimant sustain an accidental employment? * ADMIT RIGHT H</li> </ol>	injury or suffer an occupational disease arising out of and in the course of the IAND ONLY
X		4. Has claimant filed a Form 3 within t	the statutory period of time?
<u> </u>	***	<ol> <li>Did respondent, at the time of the a the carrier named in the caption ab</li> </ol>	alleged injury, have an own-risk permit or a compensation insurance policy with ove?
X		<ol><li>Did claimant timely notify responde</li></ol>	nt of the injury?
X		<ol><li>Has claimant been provided medical</li></ol>	1.12
X			ent of temporary total disability payments to claimant?
			paid to claiment from to for a ks in the total sum of \$ for a
	(ALL	Has respondent selected a treating     The treating physician isDr. Wat     DEPOSITIONS OF MEDICAL EXPER	physician? Is (name of treating physician). TS SHALL BE COMPLETED PRIOR TO TRIAL.)
			ensation rate: TTDPPD
		es: Reserve the right to add additional defer	nses upon completion of discovery, deny right elbow, right shoulder, neck:
X State all affirm dalmant is rec	ative delens elving short-	term disability of \$491/week, beginning date	- or approximately o-1-12 till o continuing

14. Respondent hereby certifies that a copy of the medical report written by Dr. and dated was mailed, together with a copy of this motion to Opposing party/Counsel.

(LIST ON A SEPARATE SHEET, ADDITIONAL WITNESSES, EXHIBITS AND MEDIOAL EVIDENCE)

Medical records of Dr. Alan Martin

Opposing Party Jack G. Zurawik		•	
Address (Number & Street) P.O. Box 35346	:	•	
City Tursa	State OK	Zip Code 74153-0346	

kip 1580-79 8/11

	signed this1/th-	hay.of-gebr	ember	<u></u>
•	Signature of Filing Pa	The Committee of	Jam	#7085
٠.	Address (Number & S P. O. Box 1710	Street)		
	City Tulsa	State OK	Zip Code 74101-17	10
	Telephone # of Filing (918) 382-1400	Party		
i	Print or type name of Jennifer A. Sloan	Attomey	OBA# 19846	

THIS SPACE FOR COURT USE ONLY

### SUPPLEMENTAL

FORM 10	- WORKERS COMPE		THIS SPACE FOR COURT USE ONLY
Orest estates to	1915 NORT		
Send original to Workers' Compensi	OKLAHOMA CITY, OKI	LAHUMA /3105-4918	
Claimant or the Clai	imant's Attorney of Record		
In re claim of:		_	
Full Name of Injure SONYA D. LANGE	ed Employee (Claimant) E		
Claimant's Social	Security Number (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIA	L STIPULATION OFFERED BY RESPONDE
		WCC FILE NO.	2012-07091A
Name of Employe JOHN ZINK COM	r (Respondent) PANY_LLC	Date of Injury	J. L. VIOSIN
Employer's Insurance Own Risk Group, Univ	Center, Permit # for Court Approved Individual Self-Insured or nsured OLD REPUBLIC INSURANCE		09/01/2010
YOTE: Mediatio	n is available to address certain workers'	compensation disputes.	For information, call (405) son ex-
r In-State Toll	Free (800) 522-8210.	•	(100) 012.87
YES	NO (Please type or Print)	•	
X	1. Was claimant at the time of the alle	eged injury, an employee of the a	bove named respondent?
X	2. Was claimant covered by the Work		
<u>X</u>	3. Did dalment sustain an accidental employment? * ADMIT RIGHT H	injury or suffer an occupational di IAND ONLY	isease arising out of and in the course of the
X	4. Has claimant filed a Form 3 within t		
X			ermit or a compensation insurance policy with
X	6. Did dalmant timely notify responde		
X	7. Has claimant been provided medica	al trealment?	
<u> </u>	8. Has respondent commenced payment	ent of temporary total disability pa	ayments to claimant?
	Temporary total disability has been total of week	paid to claimant from ks in the total sum of \$	tofor a
	9. Has respondent selected a treating The treating physician is Tr. Watt		
	The treating physician is Dr. Wait (ALL DEPOSITIONS OF MEDICAL EXPERT	TS SHALL BE COMPLETED	(name of treating physician).
x	10. Is rate an Issue? Claimant's compe		
State all affirmativ	e defenses: Reserve the right to add additional defen	ises those completion of discover	ur dany right albour daht should
pre-existing condi	tion:	, , , , , , , , , , , , , , , , , , , ,	**************************************
Ust the name of a	ll witnesses who may be called by respondent at trial:	: All Claimant's witnesses: All pre	Mously endorsed Whiesses Tr. Garrell Water
	be introduced at Irial: All Claimant's exhibits; All previ	<del></del>	
Respondent hereb	by certifies that a copy of the medical report written by ner with a copy of this motion to Opposing party/Coun	Dr. ssel.	and dated.
(L	IST ON A SEPARATE SHEET, ADDITIONAL W	VITNESSES, EXHIBITS AND	MEDICAL EVIDENCE
clare under penalty	y of perjury that I have examined all statements or	ontained herein, and to the her	t of my knowledge and hallof them.
eci and complete.	y of perjury that I have examined all statements co Any person who commits workers' compensatio	n fraud, upon conviction, shall	be guilty of a folony,
REBY CERTIFY	THAT A COPY HAS BEEN SENT TO:	Signed this10thd	ay of September 2012

Opposing Party Jack G. Zurawikka Address (Number & Street) P.O.Box 35346 State Zip Code 74153-0346 Via frax & reg. mail

klp 1580-79 8/11

Signalure of Fling Party Address (Number & Street) P. Q. Box 1710 Zip Code 74101-1710 City Tuisa State OK Telephone # of Filing Party (918) 382-1400 Print or type name of Attorney Jennifer A. Sloan

OBA# 19846



# WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS SPACE FOR	COURT	USF	ONI

Send original to
Workers' Compensation Court and 1 copy to
Claimant or the Claimant's Attorney of Percent

Claimant or the Claimant's Attor	ory of Record		
In re claim of:  Full Name of Injured Employee SONYA D. LANGE	(Claimant)		
Claimant's Social Security Nuo	uber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDE	
		WCC FILE NO. 2012-07091A	
Name of Employer (Respondent) JOHN ZINK COMPANY, ILC		Date of Injury 09/01/2010	
Employer's Insurance Cerrier, Pennik Risk Group, Uninsured OLD REI	# for Court Approved Individual Self-lasured or Owa PUBLIC INSURANCE	03/01/20/0	
OTE: Mediation is available to YES NO	address certain workers' compensation disputes. (Please type or Print)	For information, call (405) 522-8760 or in-state toll free (800) 522-8210.	
	1. Was claimant at the time of the allege	injury, an employee of the above named respondent?	
x	2. Was claimant covered by the Workers		
X	<ol> <li>Did claimant sustain an accidental inj</li> <li>* ADMIT RIGHT HAND ONLY</li> </ol>	ury or suffer an occupational disease arising out of and in the course of the employmen	
	4. Has claimant filed a Form 3 within the	statutory period of time?	
X	<ol><li>Did respondent, at the time of the alleg named in the caption above?</li></ol>	ged injury, have an own-risk permit or a compensation insurance policy with the carrie	
X	6. Did claimant timely notify respondent	of the injury?	
x	<ol> <li>Has claimant been provided medical in</li> </ol>	reatment?	
		of temporary total disability payments to claimant?	
	Temporary total disability has been pa	id to claimant from to for a for a	
<u>x</u>	Has respondent selected a treating phy The treating physician is <u>In Waits</u>		
(ALL		TS SHALL BE COMPLETED PRIOR TO TRIAL.)	
x	10. Is rate an issue? Claimant's compensat	tion rate: TTD PPD PPD	
State all affirmative defenses: DFNY NECK	Reserve the right to add additional delenses up	on completion of discovery; DENY RKIHT ELBOW; DENY RIGHT SHOULDER;	
list the name of all winnesses	who may be called by respondent at trial. All Ci	laimant's witnesses; All previously endorsed witnesses;	
List all exhibits to be introduc	ed at trial: All Claimant's exhibits; All previous	ly endorsed exhibits:	
Respondent hereby certifies the was mailed, together with a co	at a copy of the medical report written by Dr. Opy of this motion to Opposing party/Counsel.	Jarrett Watts and dated 4-25-12	
(LIST ON	A SEPARATE SHEET, ADDITIONAL \	WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)	
clare under penalty of perjuy that I h ers' compensation fraud, upon consis EREBY CERTIFY THAT A	ave examined all statements contained herein, and to t ction, shall be guilty of a felony. COPY HAS BEEN SENT TO:	the best of my browledge and belief, they are true, correct and complete. Any person who compiles  Signed this 2/5 day of August , 2012	
pposing Party ck G. Zurawik		]	
ddress (Number & Street) O. Box 35346			
ity Sto			
	74153-0346		
1580-79 1		Signature of Filing Party	
		Address (Number & Street) P. O. Box 1710	
		City State Zip Code Tulsa OK 74101-1710	
•		Telephone # of Filing Party (918) 382-1400	
		Priot or type name of Attorney OBA# Jennifer A. Sloan 19846	



## WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS SPACE	FOR	COURT	USF	ONU

Send original to

Workers' Compensation Court at Claimant or the Claimant's Attor		100 40 100 40 10	
In re claim of:			
Full Name of Injured Employed SONYA D. LANGE	(Claimant)		************************************
Claimant's Social Security Nu	mber (I AST A DICITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERE	D BY RESPONDENT
Contract of the Contract of th	ind just 4 Diotts Only)	WCC FILE NO. 2012-07091A	
Name of Employer (Responder JOHN ZINK COMPANY, LLC		Date of Injury 09/01/2010	
Employer's insurance Carrier, Penni Risk Group, Uninsured OLD RE	t # for Court Approved Individual Self-Insured or Own PUBLIC INSURANCE		
NOTE: Mediation is available to	address certain workers' compensation disputes	 s. For information, call (405) 522-8760 or in-state toli free (800) 522	
YES NO	(Please type or Print)	. To mioring can (405) 322-6700 of the late for the (600) 322	:-8210.
X	. 1. Was claiment at the time of the alleg	ed injury, an employee of the above named respondent?	
X	2. Was claiment covered by the Worker	rs' Compensation Code?	
X	3. Did claiment sustain an accidental in ADMIT RIGHT HAND ONLY	njury or suffer an occupational disease arising out of and in the cours	ie of the employment?
X	4. Has claimant filed a Form 3 within the	he statutory period of time?	
x	<ol> <li>Did respondent, at the time of the all named in the caption above?</li> </ol>	leged injury, have an own-risk permit or a compensation insurance p	olicy with the carrier
X	<ol> <li>Did claimant timely notify responder</li> </ol>	nt of the injury?	
X	7. Has claimant been provided medical	treatment?	
	8. Has respondent commenced payment	of temporary total disability payments to claimant?	•• ••• •
		paid to claimant from to	for a
<u>x</u>	<ol> <li>Has respondent selected a treating ph The treating physician is <u>Dr. Wotte</u></li> </ol>		vsician).
(ALL		RTS SHALL BE COMPLETED PRIOR TO TRIAL.)	<del></del>
X	10. Is rate an issue? Claimant's compens		
1. Suite all affirmative defenses DENY NECK	Reserve the right to add additional defenses to	pag completion of discovery; DENY RIGHT ELAOW; DENY R	GHT SHOULDER;
2. List the name of all witnesses	who may be called by respondent at trial: All t	Claimant's witnesses; All previously endorsed witnesses;	
. List all exhibits to be introduced	reil at trial: All Claimant's exhibits; All previou	sly endorsed exhibits:	
		and dated	
(LIST ON	A SEPARATE SHEET, ADDITIONAL	WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)	
teclare under penalty of perjury that I . orkers' compensation fraud, upon conv	have examined all statements contained herein, and so iction, shall be guilty of a felony.	o the best of my knowledge and belief, they are true, correct and complete. An	y person who commits
HEREBY CERTIFY THAT A	COPY HAS BEEN SENT TO:	Signed this6th day of August	, 2012
Opposing Party Jack G. Zurawik		]	
Address (Number & Street) P.O. Box 35346			••,
City Si Tulsa O	ate Zip Code K 74153-0346		
p 1580-79	A CARL CONTRACTOR OF THE SECOND		
\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	and the second of the second o	Signature of Min Carl	
		ditiess (Number & Street	
		P.J. Box 1710  Gity State Zip Code Tulsa OK 7	4101-1710
		Telephone # of Filing Party (918) 382-1400	1101-1710
	,	Print or type name of Attorney Jennifer A. Sloan	OBA#
	•		19846

EXHIBIT "C"

#### Hopkins, Shawnna

From:

Smith, Patty

Sent:

Tuesday, October 09, 2012 12:21 PM

To:

Sonya Carr (sonyadawn@att.net)

Subject:

**Termination Information** 

Dear Sonya,

You are currently off-site because of a medical restriction that prevents you from performing your job now or in the near future. In addition, you have exhausted all applicable leave under the Family and Medical Leave Act. As a result, we have made the business decision to terminate your employment.

We wish you the best for the future and remind you that you are welcome to apply for open positions we have once you are ready, willing and able to return to work.

Sincerely, Patty Smith

Patty R. Smith, PHR Human Resources Leader John Zink Company, LLC 11920 East Apache Tulsa, OK 74121-1220 918-234-2938 (Office) 918-630-2339 (Mobile) patty.smith@johnzink.com



EXHIBIT "D"

IN THE DISTRICT CO STATE OF	DISTRICT COURT	
SONYA D. LANGE,	) .	MAY 0 2 2014
Plaintiff, vs. JOHN ZINK CO., LLC,	) ) Case No. CJ-2014-357 ) Judge Daman Cantrell )	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA, TULSA COUNTY
Defendant.	)	

#### AGREED MUTUAL PROTECTIVE ORDER

WHEREAS, documents or information containing identification information, financial information, banking and income records, tax records, medical/mental health information or other types of sensitive information which the party making the production deems confidential may be produced or disclosed in the course of these proceedings; and

WHEREAS, disclosure of such Confidential Information might be injurious to the parties or non-parties; and

WHEREAS, good cause therefore exists for entry of a protective order pursuant to 12 O.S. § 3226(C); and

WHEREAS, the parties wish to proceed expeditiously with discovery in this action without burdening the Court with unnecessary procedural litigation;

IT IS HEREBY STIPULATED AND AGREED that the following rules and procedures shall govern all such Confidential Information obtained in this action:



1. All such documents or information produced or disclosed in the course of this action shall be used by any party to whom such documents or information is produced or disclosed solely for the purpose of this litigation only and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

#### 2. Definitions.

- (a) "Confidential Information" shall mean any information of any type, kind or character, as defined on page one (1) first "Whereas" paragraph, that is designated confidential by any party, whether it be a document (including both paper and electronic documents), information contained in a document, information revealed during a deposition, information revealed in any discovery responses or otherwise supplied or revealed during the course of, or in connection with, this litigation.
- (b) "Receiving Party" shall mean a party to this lawsuit to whom Confidential Information is disclosed.
- (c) "Producing Party" shall mean a party to this lawsuit who discloses Confidential Information to another party.

#### 3. Designations and Challenges.

(a) To designate, the Producing Party shall stamp "Confidential" or "Confidential Information" on all copies of documents they deem to contain Confidential Information. Deposition testimony or any portion thereof may be designated Confidential Information on the record at the deposition or in a letter to all counsel sent within thirty (30) days after receipt of the deposition transcript. Until this thirty-day period expires, all deposition testimony shall be considered Confidential Information unless agreed to by all Parties in writing.

Discovery responses or answers containing Confidential Information shall be set forth separately and stamped "Confidential" or "Confidential Information."

- (b) A Receiving Party shall not be obligated to challenge the propriety of a designation of Confidential Information at the time that such designation is made. Should a Receiving Party disagree, at any stage of this case, with a designation of documents or information as Confidential Information, the designation may be challenged as follows. First, the Receiving Party disputing the designation shall try to resolve such dispute informally by conferring with the Producing Party. If the dispute is not resolved informally, the Receiving Party shall identify the disputed designations in writing, to counsel for the Producing Party. The Producing Party shall have fourteen (14) calendar days from receipt of this written notice to respond in writing. If the Producing Party responds that such challenged documents do, or information does, contain Confidential Information, the dispute may be presented by motion to the Court by the Receiving Party. All documents or information designated Confidential Information shall retain that designation and shall remain subject to the terms of this Protective Order unless the Court decides that challenged documents or information shall not be covered by the terms of this Order and any and all proceedings and appeals challenging such decision shall have been concluded. Nothing shall affect any Party's right to request leave of court to be relieved of this Order for any reason.
- 4. Confidential Information, any copies thereof and any information contained therein or derived therefrom shall be made available only to the following persons when needed by them in connection with their duties in the conduct of this action:
  - (a) attorneys of record in this action and their partners or associate attorneys;

- (b) any persons regularly employed by such attorneys or their firms, when working in connection with this action under the direct supervision of partners or associate attorneys of said firms;
- (c) any independent expert or consultant who has been consulted for the purpose of being retained or who has been retained by counsel to provide assistance, expert advice or testimony in this action, and the employees of such experts or consultants when working in connection with this action under the direct supervision of said persons;
- (d) officers, directors or employees of the Receiving Party assisting counsel for that Receiving Party in the conduct of the litigation.
- (e) the court if filed under seal or with the prior written permission of the Producing Party;
- (f) court reporters or other persons preparing transcripts of testimony;
- (g) any other person on such terms and conditions as the parties may agree in writing; or
- (h) as the Court may hereafter by order direct;

provided that any person to whom any Confidential Information is disclosed pursuant to subparagraph 4(c) above shall, prior to any such disclosure, execute an Acknowledgment agreeing to abide by the terms of this Order. The Acknowledgment is appended hereto as Exhibit 1. Such Acknowledgments shall be retained by counsel of record making such disclosure, and shall be made available to counsel for the Producing Party upon a showing of reasonable cause. No person to whom Confidential Information is disclosed pursuant to the provisions of this

paragraph shall disclose Confidential Information to any person not entitled under the terms of this Order to receive it.

- 5. Notwithstanding any other provisions of this Order, Confidential Information shall not be disclosed to any employee, agent, or consultant of any competitor of the Producing Party. If any party has reason to believe that a competitor has improperly acquired or learned of Confidential Information, the Receiving Party, upon written demand from the Producing Party, shall reveal whether Confidential Information has been disclosed to any employee, agent, or consultant of such competitor company.
- 6. The inadvertent, unintentional, or in camera disclosure of Confidential Information shall not generally be deemed a waiver, in whole or in part, of any claims of confidentiality.
- 7. All such Confidential Information shall be used in depositions only in a manner calculated to preserve the confidentiality of such material and of those portions of the transcripts of and exhibits to such depositions which deal with such Confidential Information. Any court reporter or other person taking or preparing transcripts of a deposition at which testimony and exhibits containing Confidential Information can reasonably be expected to be disclosed will be advised of the terms of this Order and agree to be bound thereby. Only persons entitled to receive such Confidential Information pursuant to this Order may attend depositions at which Confidential Information is or is likely to be disclosed or discussed.
- 8. Nothing in paragraph 4 will preclude the Receiving Party from using any Confidential Material at the deposition of:
  - (a) present directors and officers of the Producing Party;
  - (b) former directors or officers of the Producing Party;

- (c) present or former employees, agents or representatives of the Producing Party who, at the time of their affiliation or employment with the Producing Party, had access to information identical or substantially similar to the Confidential Material to be used at his/her deposition;
- (d) any person identified in the Confidential Information as the author, addressee, or other designated recipient of the Confidential Information; and
- any other Designated Deponent provided that the procedure hereinafter described is followed. When a Receiving Party wishes to use Confidential Information with a Designated Deponent, the Receiving Party must serve upon the Designated Deponent, with a copy upon counsel for the Producing Party not less than fifteen calendar days prior to the deposition, a written request for the execution of an Acknowledgment. The Receiving Party must promptly, but in no event less than two business days, advise counsel for the Producing Party of the receipt of an executed Acknowledgement by the Designated Deponent. If the Designated Deponent fails to execute an Acknowledgement, the Receiving Party shall promptly notify the Producing Party of that fact. Unless the Producing Party files a motion for protective order prior to the scheduled date of the deposition, the deposition shall go forward as scheduled, and the Producing Party, while not waiving its rights to object to the disclosure of, or testimony concerning, Confidential Information at the deposition, shall be deemed to have waived its rights to preclude, postpone, recess, or otherwise interrupt the deposition on that ground. However, if the Designated Deponent does not execute Acknowledgement, Confidential Information shall not be used during the

deposition, shown to the deponent, or in any way referenced. If the Producing Party files a motion for protective order, the deposition shall be automatically stayed until the trial court determines the motion; provided, however, that in such event, the Receiving Party may, at its option, go forward with the deposition without the use of Confidential Information therein, and without waiving its right to resume the deposition to include the use of Confidential Information if the Court's ruling on the motion for protective order so permits.

- 9. All interrogatories or interrogatory answers, requests for admissions or answers thereto, deposition transcripts or exhibits thereto, briefs, or other documents of any kind which contain Confidential Information shall be subject to the provisions of this Order.
- In the event that any pleading or other document which contains Confidential Information is to be filed with the Court, such document shall not be filed unless a motion for, and until an order of, impoundment governing such pleading or document has been made and valed upon by the Court. Such motion shall seek impoundment of all pleadings or documents containing Confidential Information until final disposition of the action (including the passage of any time in which to appeal or petition for certiorari), with custody thereafter to rest with counsel for the Producing Party. The parties agree not to oppose any motion for impoundment made pursuant to this paragraph. To the extent that Confidential Information can be segregated from the non-confidential material without undue burden or expense, only the Confidential Information shall be filed subject to the above terms.
- 11. At the conclusion of the action by way of final judgment (including the exhaustion of all appeals) or settlement, all Confidential Information and copies thereof and all documents containing Confidential Information in the possession, custody or control of any

Receiving Party or its counsel shall be promptly turned over to counsel for the Producing Party or destroyed. Each counsel of record for each Receiving Party shall provide a sworn statement to counsel for the Producing Party stating that all Confidential Information and copies thereof have been turned over to counsel for the Producing Party or destroyed.

- 12. Nothing herein shall be construed as waiving the right of a Producing Party to assert that particular material is subject to a claim of privilege.
- 13. The designation of information treated as Confidential Information pursuant to this Stipulation and Order shall not be construed as a concession by any party that such information is relevant or material to any issue, or does in fact contain or reflect proprietary or confidential information.
- 14. Nothing herein shall preclude any party from applying to the Court for any modification of this Order as it may deem appropriate in the circumstances; provided, however, that prior to such application, the parties involved shall make reasonable effort to resolve the matter by agreement.

DAMAN CANTREL

Judge of the District Court

Approved as to Form and Content:

Tim Gilpin, OBA No. 11844

Gilpin Law Office

1874 S Boulder

Tulsa, OK 74119

Telephone (918) 583-8900

Facsimile (918) 796-5724

timgilpin@gilpinlaw.net

Attorney for Plaintiff

Kristen L. Brightmire, OBA No. 14239 Sierra G. Salton, OBA No. 31212

Doerner, Saunders, Daniel & Anderson, LLP

2 W 2<sup>nd</sup> St, Ste. 700

Tulsa, OK 74103

Telephone (918) 591-5204

Facsimile (918) 925-5204

kbrightmire@dsda.com

ssalton@dsda.com

Attorneys for Defendant

#### EXHIBIT 1

#### Agreement to Maintain Confidentiality

In consideration of Confidential Information being Disclosed to the undersigned recipient (the "Recipient"), the Recipient agrees as follows:

- 1. The Recipient represents and warrants that he/she has received a copy of the Agreed Protective Order entered in Sonya D. Lange v. John Zink Co., LLC., Case No. CJ-2014-357, In the District Court of Tulsa County, State of Oklahoma; and that the Recipient has read the Agreed Protective Order. The Recipient understands that he/she is subject to all appropriate sanctions and remedies for any violation of the Agreed Protective Order.
- 2. The Recipient represents and warrants that, upon receipt of Confidential Information, he/she will be bound by, and comply with, all provisions of the Agreed Protective Order.
- 3. The Recipient agrees that, upon receipt of the Confidential Information, he/she is personally subject to the jurisdiction of the State of Oklahoma, and further agrees that jurisdiction and venue for any action taken to enforce this Agreement is proper in the District Court of Tulsa County, State of Oklahoma. This Agreement shall be governed by, and construed under, the laws of the State of Oklahoma.
- 4. All capitalized terms in this Agreement shall have the same meaning as the same terms in the Agreed Protective Order.

Dated:	, 2014.	•
•		Recipient
•		
		Name:
		Print Name
	•	Address:
·		

EXHIBIT "E"

DISTRI LED 2 4 5 8 \*

## IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

NOV 2 6 2012

BRADLEY MANAGEMENT,	) SALLY HOWE SMITH, COURT CLERK ) STATE OF OKLA. TULSA COUNTY
Plaintiff,	)
a Foreign for Profit Business Corp.	) Case No. CJ-2012-
Defendant,	)

# ORDER ON MOTION FOR NEW TRIAL/RECONSIDERATION OF DISCOVERY RULING

Now on the 13<sup>th</sup> day of November, 2012, before the Court is Plaintiff's Motion for New Trial/Reconsideration of Discovery Ruling filed October 8, 2012. Appearing for the Plaintiff is his attorney, Tim Gilpin, and appearing on behalf of the Defendant is its attorney.

The Court having reviewed the file, parties' briefs and hearing oral arguments, finds that good and sufficient reason exists to Grant Plaintiff's Motion and Orders the Defendant, to produce the sought after state Workers' Compensation Form 2 forms within twenty (20) days from this date.

IT IS ORDERED, ADJUDGED and DECREED that Plaintiff's, Motion for New Trial/Reconsideration of Discovery Ruling on Plaintiff's Document Request No. 3 is GRANTED and Defendant, Grant States, is Ordered to produce the sought after Workers' Compensation Form 2 forms within twenty (20) days of this date.

UDGE of the DISTRICT COURT

11-16-12

EXHIBIT "F"

## **EMPLOYEE PLEDGE**

As our Code of Conduct makes clear, adherence to the law and ethical conduct is critical – our success depends on it.

Compliance does not just happen, however. It requires genuine and continuous commitment by each one of us. That is why we are asking every employee to sign this pledge. It signals your individual commitment to Principle One: Conduct all business affairs lawfully and with integrity.

Please read the statement below, sign the pledge and return it to your local Human Resource representative.

I have read Koch's Code of Conduct and understand that as a Koch employee, I commit to:

- Adhere to the Koch policies and standards of conduct in this booklet,
- Seek guidance if I am ever in doubt as to the proper course of conduct,
- Use one of the options Koch has made available to me to report any activities that I believe may be inconsistent with Koch policies and standards.

Signature

Printed Name

Date

Employee Number

Company Name



		DIDITION COOKS
	COURT OF TULSA COUNTY TATE OF OKLAHOMA	F I L E D  MAY 1 3 2014
SONYA D. LANGE,	)	
Plaintiff,	ý	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY
vs.	) Case No. CJ – 2014 –	00357
	) Judge Daman Car	
JOHN ZINK CO., LLC.,	)	
a Foreign Limited Liability	ý	•
Company,	)	
Defendant.	<u>,</u> ),	

# RESPONSE IN OPPOSITION TO AMENDED MOTION TO QUASH SUBPOENA DUCES TECUM ON CRAWFORD & COMPANY

#### I. <u>Introduction</u>

COMES NOW the Plaintiff, Sonya D. Lange ("Lange"), and Responds in Opposition to Defendant's, John Zink Co., LLC ("Zink") <u>Amended</u> Motion to Quash Subpoena Duces Tecum. The Subpoena sought witness contact information from Zink's workers' compensation administrator, Crawford & Company, (Exhibit "A"), in this Workers' Compensation wrongful discharge case. Currently, the dispute only concerns the discovery of **Zink employee Oklahoma Workers' Compensation Form 2s**. ("Employer's First Notice of Injury"). Form 2s have been previously ordered discovered in The Fourteenth Judicial District and are relevant to the employer's patterns of behavior to similarly situated employees.

Persons identified in the Form 2s are potentially the most relevant, important and credible witnesses in this wrongful discharge case. The Form 2s will identify potential witnesses who experienced circumstances similar to Lange in the same work environment. Further, an agreed Protective Order in on file to protect third party information.

DISTRICT COTTON

After being employed by Zink for about three and a half (3½) years, Zink fired Lange after she reported a work injury, hired an attorney, made a claim and Zink had denied several, but not all, of the claimed injured body parts in the Workers' Compensation Court. (Exhibit "B") Lange was fired while litigating the Workers' Compensation denials, as she was receiving medical care and off work on a physician's work release. (Zink Email, Exhibit "C"). Lange was wrongfully terminated: 1) because she pursued her rights and a claim under state Workers' Compensation Act; and, 2) she was fired while temporarily totally disabled (off work under physician's orders), due solely to absence from work. 85 O.S. §341(A) & (B).

#### A. CV 21 Violated - Motion To Quash should be Denied

Local Rule CV 21 provides in part:

"The Court will refuse to hear or set <u>any discovery dispute</u> unless counsel for the movant advises the Court in the motion that the lawyers have conferred either in person or by telephone in good faith about the dispute "

#### (emphasis added)

Counsel for Zink did <u>not</u> confer with Lange's counsel, by telephone or in person, prior to filing the Motion to Quash discovery in the form of the Subpoena Duces Tecum. As such, Zink's Motion to Quash should be not be set or heard and should be Denied. Subsequent to the Motions to Quash being filed, Zink <u>withdrew</u> its Motions to Quash Subpoenas Duces Tecum upon MetLife and Broadspire and amended its Motions to Quash related to Crawford & Company and Old Republic Insurance Company and limit the dispute to the discovery of Workers' Compensation Form 2s, "Employer's First Notice of Injury".

#### B. Standard

The Oklahoma Discovery Code was written and is interpreted to allow liberal discovery of information and documents that go to the allegations in a case and defenses thereto *or could lead to* evidence admissible at trial, 12 O.S. §3226(B)(1)(a):

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (emphasis added)

A Subpoena seeking relevant evidence has a tendency to make the existence of facts of consequence to the determination of this action more or less probable than they would have been without the evidence. 12 O.S. §2401. Witnesses that worked for the same employer, during the same general time frame as Lange and who also reported work injury are relevant to discovery and/or could lead to admissible trial evidence. The experience of similarly situated Zink employees goes directly to proving a pattern of behavior of this employer toward its employees who also reported a work injury.

#### C. Confidentiality - Witnesses

An Agreed Protective Order is in place to protect "identification information" and "other types of sensitive information" that may pertain to Form 2 information on third parties/witnesses. (Exhibit "D"). Zink objected to the discovery of its Form 2s on the basis of confidentiality. 85 O.S. §322. In fact, these records are not confidential to the employer/Defendant and the reporting employee. The records were made "confidential"

to *prohibit solicitation of legal cases* by third parties/attorneys from injured workers. No such solicitation will or can take place here as per the Agreed Protective Order.

In addition, other Courts in the Fourteenth Judicial District have ordered the production of Workers' Compensation Form 2s, "Employers First Notice of Injury", in an identical Workers' Compensation wrongful discharge case, see Order attached as Exhibit "E". In an abundance of caution, those parties' names and identifying information are "blacked out" as per previous resolution between them. But, it will be supplied to the Court upon order or request.

The sought after discovery seeks the identity of, and/or will lead to, persons with knowledge of the events in our case (witnesses) and/or individuals who experienced similar circumstances in the same work place during the same general time period. The identity of potential witnesses is not confidential or privileged.

"The identity and location of persons having knowledge of matters pertaining to an action are not privileged, except in the possible instance of informers."

FDIC v. St. Paul Fire & Marine Insur. Co., 53 F.R.D. 260 (W.D. Okla.1971)

#### II. Arguments & Authorities

#### A. What Subpoena Sought

Each of Lange's Subpoenas Duces Tecum sought information on:

- a. Lange's own underlying workers' compensation claim; and,
- b. Other Zink employees who filed workers' compensation claims in Oklahoma during Lange's employment tenure and shortly thereafter.

#### B. Circumstantial Evidence & Patterns of Behavior Relevant & Discoverable

Persons identified in Zink's Workers' Compensation Form 2s are potentially the most relevant, important and credible witnesses in this wrongful discharge case. Lange is simply attempting to identify witnesses, while Zink is attempting to block discovery of witnesses and improperly limit the evidence to Lange alone.

Oklahoma authorities establish that <u>patterns of a defendant/employer's behavior</u> toward its employees are important, relevant and discoverable evidence in a retaliatory discharge case brought pursuant to 85 O.S. §341. At the very least, such evidence is clearly calculated to reasonably lead to admissible trial evidence. "Because employers seldom admit to any wrongdoing, the link between the employee's filing of a workers' compensation claim and his subsequent termination must usually be shown by circumstantial evidence". Mantha v. Liquid Carbonic Industries, Inc., 1992 OK CIV APP, ¶7, 839 P.2d 200. This evidence may take the form of <u>patterns of behavior by the Defendant/employer</u> such as:

- a. encouraging employees suffering work-related injuries to file health insurance claims instead of workers' compensation claims;
- b. supervisors getting mad when employees showed interest in filing a workers' compensation claim;
- c. employees worried about being fired if they filed workers' compensation claims;
- d. employees let go after filing a workers' compensation claim, over less qualified employees who had not filed a claim.

Wallace v. Halliburton Co., 1993 OK 24, ¶¶14, 15 & 16, 850 P.2d 1056

Oklahoma Courts have also found a plaintiff/employee's retaliatory discharge

case lacking because "a pattern of termination of workers who filed claims, or of

pressure put on workers not to file claims" was not shown by the evidence. <u>Taylor v.</u> <u>Cache Nursing Centers</u>, 1994 OK CIV APP 160, ¶¶14 & 15, 891 P.2d 607.

Patterns of Zink's behavior toward its employees is at issue, relevant and discoverable evidence in a retaliatory discharge case brought pursuant to 85 O.S. §341.

#### B. Koch Industries – Lange Employee

Zink is an affiliated company of Koch Industries. Zink also objected to the Subpoena because in one part it was identified as "a/k/a Koch Industries". A plain reading of the Subpoena indicates it seeks information related to: 1) John Zink Company, LLC, 2) Its Oklahoma locations and, 3) covers an approximate three (3) year period. The addition of "a/k/a Koch Industries" is based upon information discovered that states Lange is "a Koch employee", see Zink document JZ000129: "EMPLOYEE PLEDGE". (Exhibit "F"). Other such discovered documents indicate Lange was a Koch employee and use the Koch symbol on her employee documents.

Lange's "a/k/a" was added out of caution because it is as yet unknown whether the Workers' Compensation Form 2s and/or workers' compensation coverage was held under the name of Zink or Koch.

#### III. Conclusion

Wherefore, premises considered, Plaintiff, Sonya D. Lange, pursuant to the authorities and arguments above, and CV 21, Responds in Opposition to Defendant's, John Zink Company, LLC, Motion to Quash Subpoenas Duces Tecum upon Crawford & Company and requests that the Motion to Quash be DENIED, the Subpoena Duces

Tecum discovery be Compelled and Plaintiff be granted her attorney fees and any costs associated with the Motion.

Respectfully Submitted,

Tim Gilpin, OBA #11844
GILPIN LAW OFFICE
1874 South Boulder
TULSA, OK 74119
(918) 583-8900 telephone
(918) 796-5724 fax
timgilpin@gilpinlaw.net

Attorney for Plaintiff, Sonya D. Lange

#### **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Street, Suite 700 Tulsa, OK 74103-3117

on this  $\frac{13^{4}}{3}$  day of  $\frac{94ay}{3}$ , 2014

Tim Gilpin

EXHIBIT "A"

## IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

SONYA D. LANGE,	· )
Plaintiff,	}
Vs.	) Case No. CJ – 2014 – 00357
JOHN ZINK CO., LLC., a Foreign Limited Liability Company,	) Judge Daman Cantrell ) ) ) )
Defendant.	)

#### **SUBPOENA DUCES TECUM - CIVIL**

TO: Crawford & Company, c/o
The Corporation Company
1833 S. Morgan Road
OKC, OK 73128

#### **GREETINGS:**

Pursuant to 12 O.S. 2004.1, YOU ARE HEREBY COMMANDED, under penalty of law, pursuant to this Subpoena Duces Tecum to PRODUCE or PERMIT INSPECTION and COPYING of documents and materials listed below on the 8<sup>th</sup> day of May, 2014, at 9:30 am., at the Law Office of Tim Gilpin, 1874 S. Boulder, Tulsa, OK 74119. Produce the following Documents, Things, Communications, ESI communications, Emails, Letters, Memos, etc., regarding:

Oklahoma workers' compensation case of <u>Sonya D. Lange v. John Zink Co., LLC</u>, WCC # 2012-07091A (S. Lange DOB 6-19-69), specifically:

1. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's absence from work due to an alleged work injury. This request does not seek attorney/client communications; and,



- communications between you and John Zink, LLC, a/k/a Koch Industries, (its
  officers, managers, supervisors or authorized representative) related to
  Lange's temporary total disability (time off work to recover or healing period
  and period of restricted work duty that employer could not accommodate) due
  to an alleged work injury. This request does not seek attorney/client
  communications; and,
- 3. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's ability to return to work from an alleged work injury. This request does not seek attorney/client communications; and,
- 4. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's medical treatment or care due to an alleged work injury. This request does not seek attorney/client communications; and,
- 5. communications between you and John Zink, LLC, a/k/a Koch Industries, (its officers, managers, supervisors or authorized representative) related to Lange's permanent or temporary work restrictions due to an alleged work injury. This request does not seek attorney/client communications.
- Copies of Oklahoma Workers' Compensation Form 2s filed or created on behalf of John Zink, LLC, a/k/a Koch Industries for the time period of October 1, 2010, to present.

Produce a copy of the original materials at the Law Offices listed above on the date set forth above and/or give testimony as to the whereabouts of the sought after materials. This can be accomplished by delivering the materials to 1874 S. Boulder, Tulsa, Oklahoma, 74119. Your duties in responding to this Subpoena: Produce the documents and things described above as they are kept in the usual course of your business, or you can organize and label them to correspond to the categories described above. If you withhold any document(s) sought in this Subpoena on the claim that it/they are privileged or subject to protection as trial preparation materials, you must make this claim expressly; this claim must be supported by a description of the nature of the document(s), communication(s) or things which you have not produced, sufficient to allow me to contest the claim.

In order to allow objections to the production of documents and things to be to be filed, you should not produce them until the date specified in this Subpoena, and if an objection is filed, until the court rules on the objection.

Hereto fail not, under penalty of law.

Issued this \_\_\_\_\_day of \_\_\_

2014.

Respectfully Submitted,

Tim Gilpin, OBA #11844
GILPIN LAW OFFICE
1874 South Boulder
TULSA, OK 74119
(918) 583-8900 telephone
(918) 796-5724 fax
timgilpin@gilpinlaw.net
Attorney for Plaintiff, Sonya D. Lange

## **CERTIFICATE OF MAILING**

I, Tim Gilpin, do hereby certify that I placed a true and correct copy of the above and foregoing instrument was mailed, postage prepaid, to Defendant's legal counsel:

Kristen L. Brightmire Sierra G. Slaton Doerner, Saunders, et. al. Two West Second Tulsa, OK 74103-SENDER: COMPLETE THIS SECTION COMPLETE THIS SECTION ON DELIVERY Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. A. Signature Korri Behler ■ Print your name and address on the reverse ☐ Agent THE CORPORATION COMPANY so that we can return the card to you. B. Receive 833 8 Michelan Rd Attach this card to the back of the malipiece, C. Date of Delive Oklahoma City or on the front if space permits. D. Is delivery address different from Item If YES, enter delivery address below: Service Type Certified Mail Express Mail ☐ Registered Return Receipt for Merchandis ☐ Insured Mail □ C.O.D. 4. Restricted Delivery? (Extra Fee) 7011 1570 0001 6739 1993 PS Form; 3811, February 2004 **Domestic Return Receipt** 

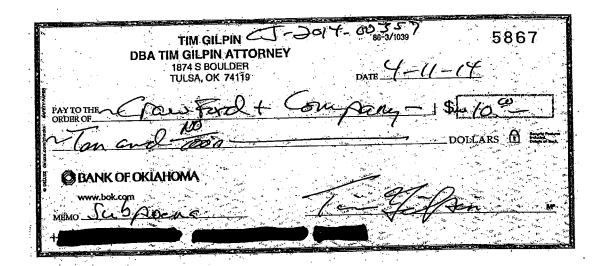


EXHIBIT "B"

Send original and 4 coples to: Workers' Compensation Court		TH STILES	trus souce this chanting the
	1915 NORT OKLAHOMA CITY		
Name of Claimant (Injured Employee)	Please che	eck appropriate box	
SUNYAD. LANGE			JUN 22 2012
Name of Employer	. 7   rigariy state	Previously Filed Form 3. Must whether amendment is in	
Court Use Driv VIDERST	eles Information.	•	WORKERS COMPENSATION-COURT
Lyud 18upublic	EMPLOYEE*	S FIRST NOTICE OF ACCIDENT	ALINJURY AND CLAIM FOR COMPENSATION
NOTE: Mediation is available to address certain w For information, call (405) 522-8760 or In-State	orkers' compensation dis-	WCC FLE NO.	2012-07091A
(Please type or print)			20,2 0,0)1 A
EMPLOYEE NAME (Last, First, Middle):	So	cial Security #:	Phone:
Mailing Address (Include City, Stale & Zip);	·		1918 1232-6072
2508 2. 15 TH ST. DROKE	NARROW, OKEL	14012 Daje of Birth:	Age: Sex:
Occupation: Was your emp	loyment agreement in . /	Avg. Weekly Wage:	Length of Employment
THE THE COUNTY AND		49,000.00 ANNUALLY.	years @ 3 months@5
Date of Accident, or as applicable, Date of Terminal From Employment is a Cumulative Trauma Injury:	on injury resulted from:	. 4-	Time Injury Occurred
Parkever 5/1 /10 Arreax - Exposure 1	Single Incident	Comulative Trauma	URRIOUS DAM DP
1 HAND, RT. ELBON, RT. SHOULD	Fe. Necr.	Place of Injury: City/Co	
What is the nature of the injury or illness: Desc		ury occurred, Include object	of substance, which directly injured you:
DICTIL TO DETERMINE	KEPETITIVE US	E OF CALEULAN	REY BOARD
Have you filed a claim for Social Security Disability Insur- Benefits?	ance Are you eligible for 30 months of the fi	Medicare Benefils or will you ling of this Notice of Acciden	become eligible for Medicare Benefits within all Injury and Claim for Compensation?
YES [] NO []	YES 🗆 NO 🖸		•
Are you a previously impaired person due to a prior wo be entitled to benefits for combined disabilities against filing a "Form 3F" with the Workers' Compensation Cour	kers' compensation injury of the Multiple Injury Trust Fu I.	or obvious and apparent pre- ind. A claim against the Mu	existing disability? Il "YES", you m liple injury Trust Fund may be commenced
Treating Physician (full name):  No NE SPECIFIED.	Address:	City:	Slate: Zip:
Employer JOHN LINK L.C. ANDI	LE KOCH INDUSTRIE	nployer's FEI # (Federal ID ) EU	wmber): Telephone: 915 - 234 - 1800
Complete Malling Address:		Cliy: Tais A	State: Zip: Okur. 74116
Complete Skeet Address (if different from above):			
Sambiols and a lostoss for outstell Holl 60046).		City:	State: Zip:
Lr son-receiving temporary disability benefits to employer or insurance carrier any change imployee's employment status, occurring during the	in a malerial tari or the	mployer's insurance carrie	r chall within seven (7) days report in water
Lr son-receiving temporary disability benefits for employer or insurance carrier any change	in a malerial fact or the period of receipt of such	mployer's insurance carrie amount of income the e benefits.	r chall within seven (7) days report in water
tr son-receiving temporary disability benefits to employer or insurance carrier any change improyee's employment status, occurring during the	in a malerial fact or the e-period of receipt of such and, upon conviction, shal	nployer's insurance carrie amount of income the en benefits. If be guilty of a felony.	rshall within seven (7) days report in writi nployee is receiving or any change in t
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an receiving temporary disability benefits for employer or insurance carrier any change improyee's employment status, occurring during the my person who commits workers' compensation fra lame of dalmant's attorney it represented:  ype or Pint Name of Attorney:  Jack 6. Zurawik 11 tailing Address:  PO Box 35346  Tulsa OK	or the period of receipt of such and, upon conviction, shall upon permit Court.  OBA# Attorn matter permit record by lar provice by permit author aut	mployer's insurance carrie amount of income the endender of income the endender of the pullty of a felony.  Alting this Notice of Accission is given to the Accission is given to the Accission is given to the Accission from the felonger of their designees to endended in the notice, assion granted to the above its pursuant to 76 O.S., \$1 we concerning communicates of the concerning concerni	reshall within seven (7) days report in writing player is receiving or any change in the property of the property of the workers' Compensational interests of the Workers' Compensational interests of the Workers' Compensational interests of the motion of the Attorney General, a District control of the motion of the Attorney General, a District control of the motion of the Attorney General, a District control of the Attorney General of the notice, and the provide the such physician of health care provided form is incited intended for use as a medical of the Attorney of the Market Compensation of the Market Compensation of the Attorney of the Attorney of the Attorney of the Market Compensation of the Attorney of the Attorne
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FORM 3	RKEHS CUMPENSATIO	:	igns shall rive c	ANIAN LEE OHE
	1915 NORTH STILE	- 1	FIF	COPY
Workers' Compensation Court	LAHOMA CITY, OK 731			
Name-of-Claimant-(Injured-Employee)	Please check appropri	ate box	FEB 1	1 1 2013
SONYA D. LANGE	II. Amends Previously F	lad Farm 3 Must		
Name of Employer Josen ZINK, LLC	dearly state whether a	mendment is in		ENSATION COURT
BNO OR KOON INDUSTRIUS	eddition to, or subs	titule for prior	10	LSA
Court Use Only	<del></del>			
	EMPLOYEE'S FIRST NOT		LINJURY AND CLAIM F	DR COMPENSATION
NOTE: Mediation is available to address certain workers'		WCG FLE NO.		
For information, call (405) \$22-8760 or In-State Toll Fre	e (800) 522-8210.	6	712-0800	71 A
(Please type or print) EMPLOYEE NAME (Last, First, Middle):	Social Security	. #•	Phone:	
	Sudal Getoni	· #.	F	232-6012
Mailing Address (Include City, State & Zip);	. 13	Date of Birth:	Age:	102.60/2
25.08 5.15 H 51. BEOKEN ARROW	W OK 14012	06-19-19	<del>-</del>	Sex: Formax =
Occupation: Was your employment	agreement in Avg. Weekh		Length of Employme	
STAFF RECOUNTENT Oklahoma? YES		SEM! NET-MINN	, - · · · · · · · · · · · · · · · · · ·	months 6
Dale of Accident, or as applicable, Dale of Termination Injerson Employment if a Cumulative Trauma injury:			Time Injury Occurred	
Sir		ive Trauma 🔲		_ DAM DPM
e parts of the body injured or affected	Place	ol Injury: City/Cou	nty/State	
MDP: LT. Shadder, LTArm, Lthond, Fin	gers on both hand			
What is the nature of the injury or illness: Describe will	details how the injury occurre	d. Include object o	r substance which direc	ally injured you; i.
The state of the s	a na ven. "Estandi 1925 a produktani		ti Financia attable tos Ma	diene Charatta ht h
lave you fied a claim for Social Security Disability Insurance	Are you eligible lor-Medicare 30 months of the fling of this	Notice of Accident	al injury and Claim for C	ombeusations.
/es 🗌 no 🗎	YES D NO D		•	•
tre-you-a-previously impaired person due to a prior workers' or e entitled to benefits for combined disabilities against the Mul ling a "Form 3F" with the Workers' Compensation Court.	empensation-Injury-or-obvious tiple Injury Trust Fund. A dai	and apparent-pre- n against the Mul	existing-disability? Ople Injury Trust Fund i	nay be commenced by
Treating Physician (full name):	Address:	City:	" Slat	e: Zip:
inployer	Employer's F	El # (Federal IQ N	umber): Tele	iphone:
Complète Mailing Address:		Elly	Slat	e: Zip;
complete Street Acidness (il different from above):		- diy:	Stal	lë; Zlp:
ison receiving temporary disability benefits from an one employer or insurance carrier any change in a manployer's employment status, occurring during the period any person who commits workers' compensation traud, upon	aterial fact or the amount of the fact of the second of such benefits.	of Income the er	shall within seven (/) nployee is receiving	days report in writing or any change in the
	Upon filing this	Notice of Accid	lental Injury And Clai	m For Compensation,
lame of dalmant's attorney it represented:				orkers' Compensation General, a District
ype or Print Name of Attorney: OBA#	Attomay or the	ir designees to ex	camine all records rela	aling to the notice, any
Jack G. Zurawik 11588				ng to the notice. The hem access to medical
lalling Address:	records pursue	nl to 76 O.S., §1	9, including walver of	any privilege granted
PO Box 35346 :	provider or kno	aing communica Seriate ablates	tions mádé to a phy I by such physician o	rsician or health care or health care provider
ity State Zip	by personal ex	amination. This	form is not intended	for use as a medical
Tu1sa OK 7415		Nothing shall b Hege recognized		e, limit or impair any
elephone f: 918) 664-1113	1	•	•	منداست مسال مساله م
	] . I declare under for compensat	penatty of perjud Ion and all states	ry mat i nave examine ments contained herel	d this notice and claim in are true, correct and
	complete to the	e best of my know	viedge and belief.	•
Jack Howard	Signed this	11 da	y of February	,2013
	,		•	
	N A	<i>y</i> ,	•	
Signature of Attorney for Claimant	* Sorry	Signature of Claim	ant (must be signed by	claimant) pagen 1

THIS SPACE	FOR	COURT	USE	ОМ	Y
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FORM 10	WORKERS' COMPE		THIS SPACE FOR COURT USE ONLY		
`	1915 NORTH				
Send original to Workers' Compensation Court	OKLAHOMA CITY, OKL	AHOMA 73105-4918			
Claimant or the Claimant's Att	omey of Record				
In re claim of:					
Full Name of Injured Employ	ree (Claimant)				
SONYA D. LANGE	os (olalinality	•			
Claimant's Social Security N	lumber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL	STIPULATION OFFERED BY RESPONDENT		
XXX-XX-	(2.12. / 0.10.)	WCC FILE NO.	0.40 0.004 0		
Name of Employer (Respon	dent)	2	012-07091A		
JOHN ZINK COMPANY, LL	c	Date of Injury	70/04/2040		
	milt # for Court Approved Individual Self-Insured or		09/01/2010		
Own Risk Group, Uninsured O	LD REPUBLIC INSURANCE				
	ls to address certain workers' compensation o	lisputes. Por information, call (	405) 522-8760 or In-State Toll Free (800)		
<b>522-8210</b> .			•		
YES NO	(Please type or Print)				
X	T. Was claimant at the time of the alle	ped injury, an employee of the a	hove named respondent?		
X	2. Was claimant covered by the Work				
X	7.	•	isease arising out of and in the course of the		
	employment?	igot) of builds bit consputional a	souse around out of the Milliam Course of the		
X	4. Has claiment filed a Form 3 within t				
X	<ol><li>Did respondent, at the time of the a the carrier named in the caption about</li></ol>	Reged Injury, have an own-risk p ove?	ermit or a compensation insurance policy with		
X	6. Did claimant timely notify responde	nt of the injury?	<del>"</del>		
X	X				
X	Has respondent commenced payment	• • • • • • • • • • • • • • • • • • • •	ayments to claimant?		
	Temporary total disability has been total of week	paid to claimant from 7/10/11 is in the total sum of \$	to _8/2/11 for a		
X	Has respondent selected a treating     The treating physician is Dr. Walt	physician?	A Compation No. 1		
(ALL	DEPOSITIONS OF MEDICAL EXPERT	IS SHALL BE COMPLETED	(name of treating physician). PRIOR TO TRIAL.)		
x	10. Is rate an issue? Claimant's compe	nesting rate: TED 504:41	PPD_323.00		
State all affirmative defens					
•	ies: Reserve the right to add additional defending short-term disability of \$491/vik, beginni				
•		•	evlously endorsed witnesses; Dr. Garrett Watts:		
	uston; Lisa Mautino; Dr. Kalhleen Sisler; Dr. (				
	•	•	al records of Dr. Alan Martin; wage statement;		
12/6/12; Dr. Rim Tabbaa 5	<u>. 9/21/11 10/19/11                           </u>	ugell 8/16/11: Dr. Gillock 30/4/1	2, 5/1/13: Or Unalkin 2/27/13: Dr Sieler		
<ol> <li>Respondent hereby certifies was mailed, together with a</li> </ol>	s that a copy of the medical report written by a copy of this motion to Opposing party/Cour	/ Drsel.	and dated		
	A SEPARATE SHEET, ADDITIONAL V		O MEDICAL EVIDENCE)		
declare under penalty of perj	ury that I have examined all statements c	ontained herein, and to the be	st of my knowledge and belief, they are true, ill be guilty of a felony.		
	A COPY HAS BEEN SENT TO:		day of June, 2013		
		Signature of Filing Pagy	de la companya de la		
Opposing Party Jack G. Zurawik		Address (Number & Street	- Clour		
Address (Number & Street) P.O. Box 35346		P. D. Box 1710 V			
Tulsa O	tale Zip Code K 74153-0346	Tulsa	State Zip Code OK 74101-1710		
ah 1580-79	•	Telephone # of Filing Party (918) 382-1400	<u>'</u>		

Print or type name of Attorney Jennifer A. Sjoan

MAY. 6.2013 3:43FM	NO. 7276 F. 2	
SUPPLEMENTAL FORM 10: WORKERS' COMPEN 1915 NORTH Send original to OKI AHOMA CITY OKI	1 STILES	
Send original to OKLAHOMA CITY, OKLAWorkers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record	AHOMA 73105-4918	
In re claim of:		
Full Name of Injured Employee (Claimant) SONYA D. LANGE		
Claimant's Social Security Number (LAST 4 DIGIT'S ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT	
Name of Employer (Respondent)	WCC FILE NO. 2012-07091A	
JOHN ZINK COMPANY, LLC	Date of Injury	
Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Rick Group, Uninsured OLD REPUBLIC INSURANCE	09/01/2010	
NOTE: Mediation is available to address certain workers' compensation di	isputes. Fox information, call (405) 522–8760 or In–State Toll Free (800)	
YES NO (Please type or Print)		
1. Was claimant at the time of the alleg	ged injury, an employee of the above named respondent?	
2. Was claimant covered by the Worke	's' Compensation Act?	
3. Did claimant sustain an accidental in employment? deny right elbowish	ijury or suffer an occupational disease arising out of and in the course of the oukler, neck, left shoulder/amt/hand and fingers on both hands	
4. Has claimant filed a Form 3 within the	e statutory period of time?	
	eged injury, have an own-risk permit or a compensation insurance policy with	
X 6. Did claimant timely notify respondent	t of the injury?	
X7. Has claimant been provided medical		
••	nt of temporary total disability payments to claimant?	
Temporary total disability has been p total of weeks	aid to claimant from 7/10/11 to 8/22/11 for a	
9. Has respondent selected a treating p	hysician?	
(ALL DEPOSITIONS OF MEDICAL EXPERTS	S SHALL BE COMPLETED PRIOR TO TRIAL)	
10. Is rate an issue? Claimant's compen	sation rate: TTD _694.41 PPD _323.00	
11. State all affirmative defenses: Reserve the right to add additional defense	es upon completion of discovery deny right albowishoulder, neck, last.	
continuing; pre-existing condition; wage statement	it-term disability of \$491/week, heginning date of approximately 8-1-12 thru	
2. List the name of all winesses who may be called by respondent at trial.	All Claimants witnesses: All previously andorsed witnesses: De Commission	
Astronomer, Paris Chomesion, I is a Maintino; Dr. Kathleen Sister Dr. Ch	1alkin	
3. List all exhibits to be introduced at trial: All Claimant's exhibits: All previous	isty endorsed exhibits; Medical records of Dr. Alan Martin; wage statement;	
Dr. Watts 8/19/11, 8/22/11, 9/21/11, 10/19/11, 4/4/12, 4/25/12: Dr. Petting 4. Respondent hereby certifies that a copy of the medical report written by E was mailed, together with a copy of this motion to Opposing party/Counse	Dr. Gillock 10/4/12; Dr. Chakin 2/27/13; Dr. Sisler 12/6/12; Dr. Gillock	
(LIST ON A SEPARATE SHEET, ADDITIONAL WI	el. ITNESSES, EXHIBITS AND MEDICAL EVIDENCE)	
declare under penalty of perjury that I have examined all statements con	trained herein, and to the best of my knowledge and bellef, they are true, fraud, upon conviction, shall be guilty of a felony,	
	Sloped this 10 1 downs as a	
Opposing Party Jack G. Zurawik	Signature of Mico Petry XAM	
Address (Number & Street) P.O. Box 35346	Address (Number & Street) P. O/ Box 1710	
City State Zip Code Tursa OK 74153-0346	City State Zip Code Tulsa OK 74101-1710	
ah 1580-79	Telephone # of Filing Party (918) 382-1400	

Print or type name of Attorney Jennifer A. Sloan

OBA# 19846

mah 1580-79 8/11

SUPPLEMENTAL	5
FORM 10	

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

Send original to Workers' Compensation

THIS SPACE FOR COURT USE, ONLY OKLAHOMA CITY, OKLAHOMA 73105-4918

Claimant or the Claimant's Altomey of Record					
In re claim of:					
Full Name of Injured Employee (Claimant) SONYA D. LANGE					
Claimant's Social Security Number (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDEN				
XXX-XX-	WCC FILE NO. 2012-07091A				
. Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury				
Employer's Insurance Center, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	Court Assessment Leaf Later 18 - 18 - 18 - 18 - 18 - 18 - 18 - 18				
NOTE: Mediation is available to address certain workers' compensation (800) 522-8210.	ion disputes. For information, call (405) 522-8760 or In-State Toll Free				
YES NO (Please type or Print)					
X1. Was claimant at the time of the alle	ged injury, an employee of the above named respondent?				
2. Was claimant covered by the Works	Brs' Compensation Act?				
	njury or suffer an occupational disease adsing out of and in the course of the				
X 4. Has dalmant filed a Form 3 within the	he statutory period of time?				
	leged injury, have an own-risk permit or a compensation insurance policy with we?				
6. Did claimant timely notify responden	it of the injury?				
-7: Has claimant been provided medical					
B. Has respondent commenced payme	nt of temporary total disability payments to claimant?				
Temporary total disability has been plotal of week	paid to chalmant from 7/10/11 to 8/22/11 for a				
9. Has respondent selected a treating project of the treating physician is Dr. Watte	physician?				
(ALL DEPOSITIONS OF MEDICAL EXPERT	S SHALL BE COMPLETED PRICE TO TRIAL.)				
X 10. Is rate an Issue? Claimant's comper					
<ol> <li>State all affirmative defenses: Reserve the right to and additional defense shoulder/ami/hand</li> </ol>	resilion rate: TTD _594.41				
siculae/amyriano	neck left				
	\$491/week_hegioning date of approximately 8-1-12 thru continuing: pre-existin				
2. List the name of all witnesses who may be called by respondent at trial:	All Claimani's wimesses; All previously endorsed witnesses; Dr. Garrell Walls;				
parent william Parent Propession: Lisa Maulino; Dr. Kathleen Sisiec Dr. C.	halkin				
3. List all exhibits to be introduced at trial: All Claimant's exhibits; All previo	usly endorsed exhibits: Medical records of Dr. Alan Martin; wage statement:				
Dr. 144112, 4/25/12; Dr. Pelling	gell 8/15/11: Dr. Gillock 10/4/12: Dr. Chalkin 2/27/13:				
was mailed, together with a copy of the medical report written by i was mailed, together with a copy of this motion to Opposing party/Cours	Dr. Sisler and dated 12/6/12				
(LIST ON A SEPARATE SHEET, ADDITIONAL W	ITNESSES, EXHIBITS AND MEDICAL EVIDENCE				
declare under penalty of pedury that I have examined all statements con- prect and complete. Any person who commits workers' compensation	ntained herein, and to the best of my knowledge and belief, they are true, fraud, upon conviction, shall be guilty of a felony.				
HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	· Cland Alba · · · · · · · · · · · · · · · · · · ·				
Opposing Party Jack G. Zurawik	Signature of Filing Party				
Address (Number & Street)	r Addess (Number & Street) P.O. Box 1710				
P.U. BOX 35346	State 7in Code				
City State Zip Code	Tulsa OK74101-1710 Telephone # of Filing Party				
1580-79	(918) 382-1400				
•	Print or type name of Attorney OBA# Jennifer A. Stoen 19846				

SUPPLEMENTAL	
FORM 10	

PUMIL IV	WORKERS' COMPE	NSATION COURT	THIS SPACE FOR COURT USE ONLY
	1915 NORTI		
Send original to Workers' Compensation Co.	OKLAHOMA CITY, OKL	AHOMA 73105-4918	
Claimant or the Claimant's A	un and 1 copy to Atlomay of Record		
	morroy of record		
In re claim of:			
Full Name of Injured Emple SONYA D. LANGE	oyee (Claimant)		
		ANCHED AND DOCTOR	***************************************
Claimant's Social Security	Number (LAST 4 DIGITS ONLY)		L STIPULATION OFFERED BY RESPONDENT
		WCC FILE NO.	2012-07091A
Name of Employer (Respo	ondent)		
		Date of Injury	09/01/2010
Employer's Insurance Carrier, F	Permit # for Court Approved Individual Self-Insured or OLD REPUBLIC INSURANCE		03/01/2010
CMITTISK GLOUP, GLIBISORED	OLD REPUBLIC INSURANCE		
NOTE: Mediation is available	able to address certain workers' compensati	ion dienutes. Earla farmation	
(800) 522-8210.	The second secon	on apparest to tituo instinstin	, can (405) 522-8700 or in-State Toll Free
YES NO	(Diaments		
TEO NO	(Please type or Print)		
X	1. Was claimant at the time of the alle	ged injury, an employee of the a	ibove named respondent?
X	<ul> <li>2. Was clafmant covered by the Works</li> </ul>		·
X			lisease erising out of and in the course of the
X	_ 4. Has claimant filed a Form 3 within the	he statutory period of time?	
x			ermil or a compensation insurance policy with
· X	6. Did claimant timely notify responder		
X	- 7. Has claimant been provided medica		•
x			•
	a a sastaneous commence baltite		payments to claimant?
•	Temporary total disability has been total of week	paid to claimant from 7/10/11 s in the total sum of 5	to <u>8/22/11</u> for a
X	<ul> <li>9. Has respondent selected a freating re-</li> </ul>	nhysician?	
! 'AI	The treating physician is Dr. Walts  L DEPOSITIONS OF MEDICAL EXPERT		(name of treating physician).
•	- SECONOTION NEDICAL EXPERT	O SHALL BE COMPLETED	PRIOR TO TRIAL)
X	10. Is rate an issue? Claimant's compe	nsation rate: TTD _594.41	PPD_323.00
1. State all affirmative defer	rses: Reserve the doht to add additional defen:	ses upon completion of discove	ov. deny right albow, right shoulder neck.
•		•	••
receiving stron-term risal	hilliy of \$491/week, beginning date of approxim	rately 8-1-12 thru continuing: po	e existing condition; wage statement
<ol><li>List the name of all wines Dr. Chalkin (by rpt)</li></ol>	sses who may be called by respondent at trial:	All Claimant's witnesses: All pr	aviously endorsed witnesses: Dr. Gamelt Walts:
17.11	lesion: Lisa Mautino: Dr. Kathleen Sister:		•
		•	•
	duced at trial: All Claimant's exhibits; All previo	usly endorsed exhibits; Medic	al records of Dr. Alan Martin; wage statement;
Ur Walls M19/11, N/2/1	1, 9/21/11 10/19/11, 4/4/12, 4/25/12; Dr. Pattlo	gell 8/15/11; Dr. Gillock 10/4/12	Chalkin's report of February 27, 2013
was malled, together with	ies that a copy of the medical report written by a copy of this motion to Opposing party/Count	Or_Sister sel.	and dated 12/6/12
· LIST O	NA SEPARATE SHEET, ADDITIONAL W	/ITNESSES, EXHIBITS AND	MEDICAL EVIDENCE)
ieciare under penalty of per prrect and complete. Any p	riury that I have examined all statements co erson who commits workers' compensation	ntained herein, and to the ben fraug, upon conviction, sha	st of my knowledge and belief, they are true, If be guilty of a felony,
HEREBY CERTIFY THAT	A COPY HAS BEEN SENT TO:		day of March 2013
Opposing Party Jack G. Zurawik	The state of the s		Slotar
Address (Number & Street) P.O. Box 35346		Address (Number & Street) P. O. Box 1710	
	State Zin Code	Cliy S Tulsa	tate Zip Code OK 74101-1710
Tulsa (	OK 74153-0346	Telephone # of Filing Party	17101-1110

Ita 1580-79 8/11

(918) 382-1400

Print or type name of Attorney Jennifer A. Sloan

	রাম্ভ	211	WE	MAG
Ŀ		OR	M 1	0

in re claim of:

FORM 10	WORKERS' COMPE		THIS SPACE FOR CO	OURT USE ONLY
Send criginal to Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attomey of Reco	1915 NORTI OKLAHOMA CITY, OKL ord		18	
n æ claim of:				
Full Name of Injured Employee (Claimant) SONYA D. LANGE		1.34		***************************************
Claimant's Social Security Number (LAST	4 DIGITS ONLY)	ANSWER AND P	RETRIAL'STIPULATION OFFERED	BY RESPONDENT
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	:	Date of Inlun	2012-07091A	

Date of Injury

09/01/2010

Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE

NOTH: Mediation is available to address certain workers' compensation disputes. For information, call (405) 522-8760 or In-State Toll Free (800) 522-8210.

	YES	NO	(Please type or Print)		
	<b>x</b>		•		
	X		2. Was claimant covered by the M	alleged injury, an employee of the above named re	spondent?
	X		The second of the ti		•
	•		employment?	tal injury or suffer an occupational disease arising o	out of and in the course of the
•	X	· · · ·	4. Has claimant filed a Form 3 with	In the statutory period of time?	. :
	x	4.1 · · · ·	5. Did respondent, at the time of the carrier named in the caption	e alleged injury, have an own-risk permit or a comp above?	pensation insurance policy with
	X		6. Did claimant timely notify respon	ident of the Injury?	
	x :		. 7 Has claimant been provided me	dical treatment?	
	X		8. Has respondent commenced pa	yment of temporary total disability payments to clai	mant?
	•		Temporary total disability has be	on maldita alabamate anno anno a	8/22/11 for a
-	x	· · · · · · · · · · · · · · · · · · ·	Has respondent selected a treat     The treating physician is _ Dr. V		•
		(ALL D	DEPOSITIONS OF MEDICAL FXPR	INTERIOR TO THE COMPLETED PRIOR TO THE	of irealing physician).
		~	•		(IAL.)
- 11.	Ciala ali affirma	this defeares	10. Is rate an issue? Claimant's con	pensation rate: TTD _594.41 PPD_32	
• • •	claiment is	dre delelises	Exerce the right to and additional de	feases upon completion of discovery; deny right e	bow, right shoulder, neck;
	receiving short-	em dsahiliy	of \$491Aveek, beginning date of appro	ximately 8-1-12 thru continuing; pre-existing condi	donument atata
12.	List the name of	all witnesses	s who may be called by respondent at to	dal: All Claimant's witnesses; All previously endors	ad ufference Co. Co
	Karen Miller, Pa	ula Huddlesto	on: Lisa Mautino: Dr. Kathleen Sister	· · · · · · · · · · · · · · · · · · ·	at with esses; LY, Garrett Walts;
13.				eviously endorsed exhibits; Medical records of Dr.	Alex Milit
	Dr. Walts 8/19/1	1, 8/22/11, 9/	/21/11,10/19/11,4/4/12,4/25/12; Dr. Pe	attings 8/15/11: Dr. Gillock 10/4/12:	Alan Manin; wage statement;
4.	Respondent here was malled, toge	eby certifies the	hat a copy of the medical report written opy of this motion to Opposing party/Co	by Dr. Sieler and dated	12/6/12
		LISTONA	SEPARATE SHEET, ADDITIONAL	WITNESSES, EXHIBITS AND MEDICAL E	ADENOD
det	lare under pena	lty of perjury	that I have examined all statements	contained herein and to the best of much	MUENCE)
om	ectana completi	Any perso	on Who commits workers' compensa	contained herein, and to the best of my knowl tion fraud, upon conviction, shall be guilty of a	relony.
HE	REBY CERTIF	THAT A C	COPY HAS BEEN SENT TO:	Signed this 75 day of January	2013
Οç	posing Party			Signature of Filing Party	à VIAL.
Ad	dress (Number & D. Box 35346	Street)		Address (Number & Street) No. 1970	JACK G 3.U
Cit	у	State OK	Zip Code	City State OK	Zlp Code 74101-1710
ah	1580-79		74153-0346	Telephone # of Filing Party (918) 382-1400	
11				Print or type name of Attorney Jennifer A. Sloan	OBA# 19846

SUPPLEME	NTAL
FORM	0

Send original to Workers' Compensation Court an Claimant or the Claimant's Attorn	1915 NOI OKLAHOMA CITY, C	PENSATION COURT RTH STILES PKLAHOMA 73105-4918	THIS SPACE FOR COURT USE ONLY
In re claim of: Full Name of Injured Employee SONYA D, LANGE		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
Claimant's Social Security Num	ber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL	E
Name of Employer (Respondent JOHN ZINK COMPANY, LLC	)	WCG-FILE NO.	012-07091A
	For Court Approved Individual Self-Insured REPUBLIC INSURANCE	Date of Injury 0	9/01/2010
NOTH: Mediation is available to 522-8210.	address certain workers' compensation	n disputes. Far information, call (4	105) 522-8760 or In-State Toll Free (800)
1477	(Please type or Print)		:
X	1. Was claimant at the time of the a	lieged injury, an employee of the ab	AVA named managed—10
X	vvas claimant covered by the Wo	rkers' Compensation Act?	•••
	<ol> <li>Did claimant sustain an accidenta employment?</li> </ol>	al injury or suffer an occupational dis	ease arising out of and in the course of the
<u>X</u>	Has claimant filed a Form 3 within	the stability in a series with a series	
X	Did respondent, at the time of the	alleged injury have an gum det has	<u> </u>
Χ	the carrier named in the caption a	poves	mit or a compensation insurance policy with
	in a simulation many mothy tesporte		•
	armitiant seed broaded tiledi		•
	. Has respondent commenced payr	ment of temporary total disability pay	ments to claimant?
	Temporary total disability has bee total of were	n paid to claimant from 7/10/11	to <u>8/22/11</u> for a
X 9	Has respondent selected a treating	g phýsician?	
(ALL DEF	POSITIONS OF MEDICAL EXPER	RTS SHALL BE COMPLETED P	(name of treating physician). RIOR TO TRIAL.)
X10	). Is rate an Issue? Claimant's como	ensation rate: TTD 504.44	DDD see se
11. State all affirmative defenses: Buchamant is	eserve the right to add additional dete	nses upon completion of discovery	deny right elbow, right shoulder, neck
receiving short-lem disability of	\$491Week haaianisa dala se		
12. List the name of all witnesses wi	\$491Aweek, haginning date of approxi	malely 8-1-12 ihru continuing: pre-e	xisting condition: wage statement
Karen Miller, Paula Huddleston:	isa Mautino; Dr. Kathlean Sister	i: All Claimant's witnesses: All previ	xisting condition wage statement ously endorsed winesses; Dr. Gamelt Watts:
	Transfer and the second		
Dr. Walls 8/19/11, 8/22/11, 9/21/	11,10/19/11, 4/4/12, 4/25/12; Dr. Peti	lously endorsed exhibits: Medical o	erords of Dr. Alan Martin; wage statement:
14. Respondent hereby certifies that was malled, together with a copy	a copy of the medical report written b	ngell 8/16/11: Dr. Gillock 10/4/12: y Dr. Sister	and dated _12/8/12
(LIST ON A SE	PARATE SHEET, ADDITIONAL I	MITMERRE EVIDER AND	
declare under penalty of perjury the	at I have examined all statements	THEOSES, EXHIBITS AND N	IEDICAL EVIDENCE)
correct and complete. Any person w	no commits workers' compensation	ontained nerein, and to the best ( on fraud, upon conviction, shall b	DEDICAL EVIDENCE)  of my knowledge and belief, they are true, e guilty of a felony.
HEREBY CERTIFY THAT A COF	Y HAS BEEN SENT TO:	Signed this // day	ant laws .
Opposing Party		Signature of Filing Party	Soa VIEL.
Address (Number & Street) P.O. Box 35346		Address (Number & Street) :	JACKG ZUEYNIK P
City State Tulsa OK	Zip Code	City State Tulsa State	
	Zip Code 74153-0346	Telephone # of Filing Party (918) 382-1400	OK 74101-1710
eh 1580-79 111	•	Print or type name of Attorney Jennifer A. Sloan	OBA#
			10846

SUPPLEMENTAL FORM 10

#### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

Send origizal to C Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record

In re claim of:

Full Name of Injured Employee (Claimant)
SONYA D. LANGE

Claimant's Social Security Number (LAST 4 DIGITS ONLY)
XXX-XX

Name of Employer (Respondent)
JOHN ZINK COMPANY, LLC

Employer's Insurance Carrier, Permit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE

ICHIED AND DOG		
SWER AND PRET	RIAL STIPULATION OFFERED BY R	ESPONDE
WCC FILE NO.		
	2012-07091A	
Date of injury		
- •	09/01/2010	

THIS SPACE FOR COURT USE ONLY

NOTE: Mediation is available to address certain workers' compensation disputes. For information, call (405) 522-8760 or In-State Toll Free (800) 522-8210.

-	•					
	YES	NO	(Please type or F	²rint)		
	X		1. Was claimant	Was claimant at the time of the alleged injury, an employee of the above named respondent?		
	X				ers' Compensation Act?	
	x				hiury or suffer an occupational disease arising out of and in the course of the	
-	X				he statutory period of time?	
-	x		5. Old responder the carrier nar	nt, at the time of the al ned in the capilon abo	fleged injury, have an own-risk permit or a compensation insurance policy with	
-	X			lmely notify responder		
_	<u> </u>		7. Has claimant !	been provided medica	al treatment?	
-	X		8. Has responde	nt commenced payme	ent of temporary total disability payments to claimant?	
	•				paid to claimant from 7/10/11 to 8/22/11 for a	
-	X	· · · · · · · · · · · · · · · · · · ·	9. Has responded	ni selected a treating physician is Dr. Welt	physician?	
	<u> </u>	(ALL D	EPOSITIONS OF	MEDICAL EXPERT	IS SHALL BE COMPLETED PRIOR TO TRIAL.)	
, to special	x		10. Is rate an Issue	e? Clalmant's compe	nsalion rate: TTD <u>594 41</u> PPD 323 00	
11.	State all affim	îative defenses:	Reserve the right to	neleh lenglilbas bba	ses upon completion of discovery; deny right ellrow, right shoulder, neck;	
	receiving shor	t-term disability	of \$491/week healn	olog date of approxim	nately 8-1-12 thru continuing: pre-existing condition; wage statement	
	List the name	of all witnesses	Who may be called I	by respondent at trial:	All Claimant's witnesses; All previously endorsed witnesses; Dr. Gärrett Watts	
	Keren Miler: F	aula Huddlesto	n; Lisa Mautino		Walls	
13.	List all exhibits	to be Introduce	ed at Irial: All Claima	ni's exhibils: All previ	ously endorsed exhibits; Medical records of Dr. Alan Madin; wage statement;	
	Dr. Walls 8/19	/11, B/22/11, P/	21/11,10/19/11 4/4/	12, 4/25/12; Dr. Pettlo	ngell 8/15/11:	
14.				dical report written by Opposing party/Count		
		(LIST ON A	SEPARATE SHEE	ET, ADDITIONAL W	VITNESSES, EXHIBITS AND MEDICAL EVIDENCE)	
l dec	lare under per	alty of perjury	that I have examin	red all statements co	ontained herein, and to the hest of my knowledge and hitse stands	
com	ect.ana comple	ete. Any perso	on who commits we	rfkers' compensation	ontained herein, and to the best of my knowledge and belief, they are true n fraud, upon conviction, shall be guilty of a felony.	
IHE	REBY CERTI	FY THAT A C	OPY HAS BEEN	SENT TO:	Signed this	
	posing Party ck G. Zurawik			:. ··· . · · · ·	Signature of Filing Party	
	dress (Number ). Box 35346	& Street)	• • • • •		Address (Nimber & Street) P. O. Box 1710	
Cit	y Isa	State OK	Zip Code 74153-034	5	City State Zip Code Tulsa OK 74101-1710	
le . 16 3/11	580-79	•			Telephone # of Filing Party (918) 382-1400	
	•				Print or type name of Atlomey . OBA# Jennifer A. Stoan . 19846	

# WORKERS' COMPENSATION COURT

SUPPLEMENTAL WORKERS' COMPENS	SATION COURT THIS SPACE FOR COURT USE ONLY
1915 NORTH Send original to OKLAHOMA CITY, OKLA	· · · · · · · · · · · · · · · · · · ·
Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record	
In re claim of:	
Full Name of Injured Employee (Claimant) SONYA D. LANGE	
Claimant's Social Security Number (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT WCC FILE NO. 2012-07091A
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC	Date of Injury
Employer's Insurance Carrier, Pennit # for Court Approved Individual Self-Insured or Own Risk Group, Uninsured OLD REPUBLIC INSURANCE	09/01/2010
NOTE: Mediation is available to address certain workers' compensation dis 522-8210.	sputes. For information, call (405) 522-8760 or In-State Toll Free (800)
YES NO (Please type or Print)	
X1. Was claimant at the time of the allege	ed injury, an employee of the above named respondent?
X 2. Was claimant covered by the Worker	rs' Compensation Act?
X 3. Dki claimant sustain an accidental in employment? * ADMIT RIGHT HA	ury or suffer an occupational disease arising out of and in the course of the ND ONLY
4. Has claimant filed a Form 3 within the	• •
X	aged injury, have an own-risk permit or a compensation insurance policy with
X6. Did claimant timely notify respondent	of the injury?
X	
	nt of temporary total disability payments to claimant?
	aid to claimant from 7/10/11 to 8/22/11 for a in the total sum of \$
X 9. Has respondent selected a treating p  The treating physician is Dr. Walts  (A) I DEPOSITIONS OF MEDICAL EXPERTS	hysician? (name of treating physician).  S SHALL BE COMPLETED PRIOR TO TRIAL.)
10. Is rate an Issue? Claimant's compen 1. State all effirmative defenses: Reserve the right to add additional defense	
delmant is	
receiving short-ferm disability of \$491 (week, beginning date of approxima	
	All Claimant's witnesses: All previously endorsed witnesses; Dr. Gamett Watts;
Keren Miller, Paula Huddleston; I Isa Mautino  3. List all exhibits to be introduced at trial: All Claimant's exhibits; All previous	richt andersed exhibits: Mariical moods of De Alan Martin upon statument
Dr. Walts 8/19/11, 8/22/11, 9/21/11, 10/19/11, 4/4/12, 4/25/12; Dr. Pelting	•
<ol> <li>Respondent hereby certifies that a copy of the medical report written by I was mailed, together with a copy of this motion to Opposing party/Couns</li> </ol>	Dr. Gilfock and dated 10/A/12
	ITNESSES, EXHIBITS:AND: MEDICAL EVIDENCE)
declare under penalty of perjury that I have examined all statements col orrect and complete. Any person who commits workers' compensation	ntained herein, and to the best of my knowledge and belief, they are true, fraud, upon conviption, shall be guilty of a felony.
HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:	Signed this _0 day of October 2012
Opposing Party Jack G. Zurawik	Address (Number & Street)
Address (Number & Street) P.O. Box 35346	P. Ø. BØX 1/19
City State Zip Code Tulsa OK 74153-0346	City State Zip Code Tulsa OK 74101-1710
	Telephone # of Filing Party (918) 382-1400
nah 1580-79 /11	Print or type name of Attorney OBA# Jennifer A. Sloan 19845

SUPPLEMENTAL FORM 10

#### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OKLAHOMA CITY, OKLAHOMA 73105-4918

Send original to

II Name of I	njured Employe NGE	ee (Clair	nant)		
Claimant's Social Security Number (LAST 4 DIGITS ONLY)			LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDE WCC FILE NO. 2012-07091A	
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC				Date of Injury	09/01/2010
n Risk Group. TE: Media	Uninsured OL	D REPI		compensation disputes.	For information, call (405) 522-8
YES	NO	•	ease type or Print)		
X		1.	Was claimant at the time of the alle	eged injury, an employee of the s	above named respondent?
X		2.'	Was claimant covered by the Work	ers' Compensation Act?	
X	<del></del>	<b>3.</b>	3. Did claimant sustain an accidental injury or suffer an occupational disease arising out of and in the course of the employment? * ADMIT RIGHT HAND ONLY		
X		4,	Has claimant filed a Form 3 within t	the statutory period of time?	
X	<ol> <li>Did respondent, at the time of the alleged injury, have an own-risk permit or a compensation insurance policy with the carrier named in the caption above?</li> </ol>				
X					
X	•	7.	Has claimant been provided medical	al treatment?	
X		8.	Has respondent commenced paym	ent of lemporary total disability	payments to claimant?
			Temporary total disability has been total of week		tofor a
		9.	Has respondent selected a treating The treating physician isDr. Wat OSITIONS OF MEDICAL EXPER	physician? is TS SUALL DE COMPLETE!	(name of treating physician)
	/A11	・レニアし	131 HUNS OF MEDICAL EXPER	TO SHALL BE CUMPLETEL	FLION TO TRINCI
	(ALL			•	

List the name of all witnesses who may be called by respondent at trial: All Claimant's witnesses: All previously endorsed witnesses: Dr. Garrett Watts: Karen Miller; Paula Huddleston; Lisa Mautino

13. List all exhibits to be introduced at irial: All Claimant's exhibits; All previously endorsed exhibits; Medical records of Dr. Alan Martin

 Respondent hereby certifies that a copy of the medical report written by Dr. was mailed, logether with a copy of this motion to Opposing party/Counsel. 4 7 6 3 m (LIST ON A SEPARATE SHEET, ADDITIONAL WITNESSES, EXHIBITS AND MEDIOAL EVIDENCE)

I declare under penalty of perjury that I have examined all statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete. Any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony. and the second of the second of the second

Opposing Party Jack G. Zurawik Address (Number & Street) P.O. Box 35346 Zip Code 74153-0346 State OK

I HEREBY CERTIFY THAT A COPY HAS BEEN SENT TO:

kip 1580-79 8/11

Signed wis		- <u> </u>
Signature of Filing Party	The c	#308
Address (Number & Str P. O. Box 1710	et)	
City Tulsa	State OK	Zlp Code 74101-1710
Telephone # of Filing Pa (918) 382-1400	arty	
Print or type name of Al Jennifer A. Sloan	tomey	OBA# 19846

THIS SPACE FOR COURT USE ONLY

## SUPPLEMENTAL

### WORKERS' COMPENSATION COURT 1915 NORTH STILES

OLD REPUBLIC INSURANCE

THIS SPACE FOR COURT USE ONLY

Norkers' Compensation Court and 1 copy to Claimant or the Claimant's Attomey of Record	KLAHOMA 73 105-4918		
n re daim of:			
Full Name of Injured Employee (Claimant) SONYA D. LANGE			
Claimant's Social Security Number (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT		
	WCC FILE NO.		
Name of Employer (Respondent)	2012-07091A  Date of injury		
JOHN ZINK COMPANY, LLC			
Employeds Insurance Cooler Parall#6-Coul 4	09/01/2010		

NOTE: Mediation is available to address certain workers' compensation disputes. For information, call (405) 522-8760 or In-State Toll Free (800) 522-8210.

Y		(PI	ease type or Print)	•.	
	-	1.	Was claimant at the time of the alle	eged injury, an employee of the above named res	pondent?
X		2.	Was dalmant covered by the World		•
X	-	3.	·Did claimant sustain an accidental employment? • ADMIT RIGHT F	injury or suffer an occupational disease arising of IAND ONLY	ut of and in the course of the
X		4.	Has claimant filed a Form 3 within	the statutory period of time?	
X		5.	Did respondent, at the time of the a	olieged injury, have an own-risk permit or a compo ove?	ensation insurance policy with
X		6.	Did cialmant timely notify responde	ent of the injury?	
X		7.	Has claimant been provided medic	al trealment?	e va
x		8.	Has respondent commenced paym	ent of temporary total disability payments to clair	nant?
			Temporary total disability has been total of week	paid to claimant from totototo	for a
	(ΔΙΙ Γ	9, DEDC	Has respondent selected a treating The treating physician is Dr. Wat	physician? ts	of treating physician).
· · · · · · · · · · · · · · · · · · ·	/ALC E	DEFE	GITONS OF MEDICAL EXPER	15 SHALL BE COMPLETED PRIOR TO TH	(IAL)
X		10.	Is rate an Issue? Claimant's compe	ensation rate: TTD PPD	
fize n is mante	COLAII WIMBSSA	s wno	may be called by respondent at that	l' All L'isimani's Wildescos: All double belt codores	
			<del></del>	: All Claimant's wilnesses; All previously endorse lously endorsed exhibits; MEDICAL RECORDS	
Ust all exhibit to 10/26/10	s to be introduc	ced at	<del></del>	lously endorsed exhibits; MEDICAL RECORDS (	OF DR. ALAN MARTIN 6/21/99
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SUPPLEMENTAL FORM 10

#### WORKERS' COMPENSATION COURT . 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS	SPACE	FOR	COURT	USE	ONL	•
inis	SPACE	FOR	COURT	USE	ONL	•

Send original to Workers' Compensation Court and 1 copy to Claimant or the Claimant's Attorney of Record

Claimant or the Claimant's Attor	ney of Record	
In re claim of:		,
Full Name of Injured Employee SONYA D. LANGE	: (Clalmant)	
Claimant's Social Security Nur	mber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDENT
		WCC FILE NO. 2012-07091A
Name of Employer (Responder JOHN ZINK COMPANY, LLC		Date of Injury 09/01/2010
Employer's insurance Carrier, Pennis Risk Group, Uninsured OLD RE	f for Court Approved Individual Self-Insured or Own PUBLIC INSURANCE	VACUACIO .
NOTE: Mediation is available to YES NO	address centain workers' compensation disputes. (Please type or Print)	For information, call (405) 522-8760 or in-state toll free (800) 522-8210.
X	. 1. Was claimant at the time of the allege	d injury, an employee of the above named respondent?
X		
X	3. Did claimant sustain an accidental laj ADMIT RIGHT HAND ONLY	ury or suffer an occupational disease arising out of and in the course of the employment?
x	4. Has claimant filed a Form 3 within th	e statutory period of time?
X	<ol> <li>Did respondent, at the time of the alle named in the caption above?</li> </ol>	ged injury, have an own-risk permit or a compensation insurance policy with the carrier
X	6. Did claimant timely notify respondent	of the injury?
<u>X</u> <u>-</u>	<ol> <li>Has claimant been provided medical t</li> </ol>	reatment?
		of temporary total disability payments to claimant?
,	Temporary total disability has been partotal of week	uid to claimant from to for a
X	<ol> <li>Has respondent selected a treating phy The treating physician is <u>Dr. Walts</u></li> </ol>	rsician? (name of treating physician).
(ALL	DEPOSITIONS OF MEDICAL EXPER	TS SHALL BE COMPLETED PRIOR TO TRIAL.)
<u>x</u>	10. Is rate an issue? Claimant's compensa	
. State all affirmative defenses DFNY NECK	: Reserve the night to add additional defenses up	on completion of Alscovery: DENY RIGHT FI BOW; DENY RIGHT SHOULDER:
list the name of all witnesses	who may be called by respondent at trial. All C	laimant's witnesses; All previously endorsed witnesses;
	red at trial: All Claimant's exhibits: All previous	
Respondent hereby certifies it was mailed, together with a co	bat a copy of the medical report written by Dr. opp of this motion to Opposing party/Counsel	General Walts and dated 4-25-12
		WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)
EREBY CERTIFY THAT A	COPY HAS BEEN SENT TO:	the best of my knowledge and belief, they are true, correct and complete. Any person who commits  Signed this 2/5+ day of August , 2012
Opposing Party Jack G. Zurawik	•	]
Address (Number & Street)		
P,O. Box 35346 City St	ata Zip Code	
Nulsa O	ate Zip Code K 74153-0346	j
L580-79 11		Signalury of Fibre Party
		Address (Number & Street) P. O. Box 1710
		City State Zip Code Tulsa OK 74101-1710
		Telephone # of Filing Party (918) 382-1400
•		Print or type name of Attorney OBA#

FORM 10

#### WORKERS' COMPENSATION COURT 1915 NORTH STILES OKLAHOMA CITY, OKLAHOMA 73105-4918

THIS SPACE	FOR COURT L	
	. On COURT L	ISE ON!

Send original to

Workers' Compensation Court of Claimant or the Claimant's Atto				
In re claim of:				
Full Name of Injured Employe SONYA D. LANGE	ee (Claimant)			
Claimant's Social Security No	imber (LAST 4 DIGITS ONLY)	ANSWER AND PRETRIAL STIPULATION OFFERED BY RESPONDE		
		WCC FILE NO. 2012-07091A		
Name of Employer (Respondent) JOHN ZINK COMPANY, LLC		Date of Injury 09/01/2010		
Employer's Insurance Carrier, Perm Risk Group, Uninsured OLD Ri	ik # for Court Approved Individual Self-Insured or Ow EPUBLIC INSURANCE			
IOTE: Mediation is available to	o address certain workers' compensation disput	tes. For information, call (405) 522-8760 or in-state toll free (800) 522-8210.		
YES NO	(Please type or Print)	22-10.		
x	1. Was claimant at the time of the all-	leged injury, an employee of the above named respondent?		
x	2. Was claiment covered by the Work	·		
x		intal injury or suffer an occupational disease arising out of and in the course of the employment?		
x	4. Has claimant filed a Form 3 within	n the statutory period of time?		
X	5. Did respondent, at the time of the a named in the caption above?	alleged injury, have an own-risk permit or a compensation insurance policy with the carrie		
x	6. Did claimant timely notify respond	dent of the injury?		
X	- 7. Has claimant been provided medic	eal treatment?		
<u> </u>	8. Has respondent commenced payme	ent of temporary total disability payments to claimant?		
	Temporary total disability has been total ofw			
x	9. Has respondent selected a treating The treating physician is <u>Dr. Wo</u>			
(AL		ERTS SHALL BE COMPLETED PRIOR TO TRIAL.)		
	10. Is rate an issue? Claimant's compe			
State all affirmative defense DENY NECK		s upon completion of discovery; DENY RIGHT ELHOW; DENY RIGHT SHOULDE		
List the name of all witnesse	s who may be called by respondent at trial: Al	Il Claimant's witnesses; All previously endorsed witnesses;		
	sced at trial: Ali Cinimant's exhibits; Ali previ			
	that a copy of the medical report written by Dicopy of this motion to Opposing party/Course			
		AL WITNESSES, EXHIBITS AND MEDICAL EVIDENCE)		
kers' compensation fraud, upon con	viction, shall be guilly of a felony. A COPY HAS BEEN SENT TO:	d to the best of my knowledge and belief, they are true, correct and complete. Any person who commits		
	TOOL TIME BUDING BUNT 10;	Signed this6th day of August, 2012		
Opposing Party lack G. Zurawik				
Address (Number & Street) 2.0. Box 35346				
	tate Zip Code DK 74153-0346			
1580-79		"Signification Chair Charles		
		· Vidatess (Number & Street		
		P. J. Box 1710		
	•	Siy State Zip Code Tulsa OK 74101-1710		
		Tuisa OK 74101-1710 Telephone # of Filing Party (918) 382-1400		
		Print or type name of Attorney OBA# Jennifer A. Sloan 19846		

EXHIBIT "C"

#### Hopkins, Shawnna

From:

Smith, Patty

Sent:

Tuesday, October 09, 2012 12:21 PM

To:

Sonya Carr (sonyadawn@att.net)

Subject:

**Termination Information** 

Dear Sonya,

You are currently off-site because of a medical restriction that prevents you from performing your job now or in the near future. In addition, you have exhausted all applicable leave under the Family and Medical Leave Act. As a result, we have made the business decision to terminate your employment.

We wish you the best for the future and remind you that you are welcome to apply for open positions we have once you are ready, willing and able to return to work.

Sincerely, Patty Smith

Patty R. Smith, PHR Human Resources Leader John Zink Company, LLC 11920 East Apache Tulsa, OK 74121-1220 918-234-2938 (Office) 918-630-2339 (Mobile) patty.smith@johnzink.com



EXHIBIT "D"

	IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA		
SONYA D. LANGE,	· )	WAY A G cour	
Plaintiff,	) .	MAY 0 2 2014	
Vs.	) ) Case No. CJ-2014-357	SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY	
JOHN ZINK CO., LLC,	) Judge Daman Cantrell )		
Defendant.	)		

#### AGREED MUTUAL PROTECTIVE ORDER

WHEREAS, documents or information containing identification information, financial information, banking and income records, tax records, medical/mental health information or other types of sensitive information which the party making the production deems confidential may be produced or disclosed in the course of these proceedings; and

WHEREAS, disclosure of such Confidential Information might be injurious to the parties or non-parties; and

WHEREAS, good cause therefore exists for entry of a protective order pursuant to 12 O.S. § 3226(C); and

WHEREAS, the parties wish to proceed expeditiously with discovery in this action without burdening the Court with unnecessary procedural litigation;

IT IS HEREBY STIPULATED AND AGREED that the following rules and procedures shall govern all such Confidential Information obtained in this action:

